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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 828.

G. DEROSSET LAMAR, EXECUTOR OF GAZAWAY B. LAMAR, DECEASED, PLAINTIFF IN ERROR,

vs.

HUGH McCULLOCH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 24, 1885.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between G. De Rosset Lamar, of the city and State of New York, as executor of the last will and testament of Gazaway B. Lamar, deceased, late of the said city, and Hugh McCulloch, a manifest error hath happened, to the great damage of the said G. De Rosset Lamar, executor as aforesaid, as is said and as appears by his complaint. We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place before the justices aforesaid on the second Monday of October next, that the record and proceedings aforesaid being inspected the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of February, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

[Seal of U. S. Circuit Court, Southern Dist. N. Y.]

TIMOTHY GRIFFITH,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Allowed.
WM. J. WALLACE.

2 Endorsed: Supreme Court of the United States. G. De Rosset Lamar, executor, plaintiff in error, *vs.* Hugh McCulloch. Writ of error. Service of a copy of the within is admitted this 13th day of Feb., 1885. Elihu Root, K., U. S. att'y, att'y for the def. in error. U. S. circuit court. Filed Feb. 13, 1885. Timothy Griffith, clerk.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the sec-
3 ond circuit, by virtue of the foregoing writ of error, and in obedience thereto do hereby certify that the following pages,

numbered from four to two hundred and sixty-two, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of G. De Rosset Lamar, of the city and State of New York, as executor of the last will and testament of Gazaway B. Lamar, deceased, late of the said city, plaintiff in error, against Hugh McCulloch, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this nineteenth day of Feb'y, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

[Seal of U. S. Circuit Court, Southern Dist. N. Y.]

TIMOTHY GRIFFITH, *Clerk.*

4 *Summons for Relief.* (*Com. not Served.*)

New York Supreme Court, City and County of New York.

GAZAWAY B. LAMAR, Plaintiff, *against* HUGH MCCULLOCH, Defendant.

To the defendant, Hugh McCulloch:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the city of New York, and to serve a copy of your answer to the said complaint on the subscriber at their office, number 61 Wall street, New York city, within twenty days after the service of the summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated September 24th, 1873.

WARD & JONES & WHITEHEAD,
Plaintiff's Attorneys, 61 Wall Street, N. Y. City.

5 Endorsed: New York supreme court. Gazaway B. Lamar, plaintiff, against Hugh McCulloch, defendant. Summons. Ward & Jones & Whitehead, pl'ff's att'ys, 61 Wall St. To Hon. Hugh McColloch, def't within named.

6 New York Supreme Court, City and County of New York.

GAZAWAY B. LAMAR, Plaintiff, *against* HUGH MCCULLOCH, Defendant.

The above-named plaintiff, by his attorneys, Ward & Jones & Whitehead, complaining of the above-named defendant, complain- and alleges:

First. That on various days during the month of November, eighteen hundred and sixty-five, at the village of Thomasville, in the county of Thomas, and State of Georgia, the above-named defendant unlawfully took from the possession of this plaintiff and carried

away five hundred and seventy-eight bales of upland cotton, weighing two hundred and eighty-nine thousand pounds; the property of this plaintiff, of the value of one hundred and fifty thousand two hundred and eighty dollars.

Second. That on various days during the months of October, November, and December, eighteen hundred and sixty-
7 five, at the city of Tallahassee, in the State of Florida, and at various plantations adjacent thereto, the said defendant unlawfully took from the possession of this plaintiff and carried away other four hundred bales and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, the property of this plaintiff, of the value of one hundred and ten thousand seven hundred and sixty dollars.

Third. That the said defendant still unlawfully detains the said cottons from this plaintiff, to the damage of this plaintiff eight hundred thousand dollars.

Wherefore plaintiff demands judgment against the defendant for the sum of two hundred and sixty-one thousand and forty dollars, with interest on one hundred and fifty thousand two hundred and eighty dollars thereof from the 27th day of November, 1865, and interest on one hundred and ten thousand seven hundred and sixty dollars thereof from the 15th day of December, 1865, and
8 costs of suit, and for such further and other relief as to the court shall seem meet.

WARD & JONES & WHITEHEAD,
Plaintiff's Attorneys, 61 Wall Street, New York City.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Gazaway B. Lamar, being duly affirmed, says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint, and knows the contents thereof; that the said complaint is true, to his knowledge, except as to these matters stated on information and belief, and as to these matters he believes it to be true. G. B. LAMAR.

Subscribed and affirmed before me, this 27th day of September, 1873.

JOHN A. WRIGHT,
Notary Public, N. Y.

9 Endorsed: N. Y. supreme court. Gazaway B. Lamar *vs.* Hugh McCulloch. Copy complaint. Ward & Jones & Whitehead, pl'ff's att'ys, No. 61 Wall street, New York. To Geo. Bliss, Esqr., att'y for def't, 39 & 41 Chamber St. Rec'd & service admitted Oct. 14, 1873. R. M. S.

SIR: You will please take notice that the within is a copy of the complaint in this action, which was this day filed in the office of the clerk of the city and county of New York.

Oct. 14, 1873.

Yours, &c., WARD & JONES & WHITEHEAD,
Att'ys for Pl'ff.

To Geo. Bliss, Esqr., att'y for def't.

10 The President of the United States of America to the justice of the supreme court of the State of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Hugh McCullogh, defendant, by Gazaway B. Lamar, plaintiff, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the third day of November, 1873, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Nathan Clifford, Esquire, senior justice of the Supreme Court of the United States, the first day of November, in the year one thousand eight hundred and seventy-three.

11 KENNETH G. WHITE *Clerk.*

GEORGE BLISS,
Defendant's Attorney.

Endorsed: U. S. circuit court. Hugh McCullogh ads. Gazaway B. Lamar. Certiorari. Geo. Bliss, defendant's attorney.

I have this day personally served upon the dep. clerk of the supreme court of the State of New York a duplicate of the within writ, at the same time showing the original.

Dated November 3d, 1873.

OLIVER FISKE,
U. S. Marshal.

12 *Declaration.*

Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR, Plaintiff, *against* HUGH MCCULLOCH, Defendant.

Gazaway B. Lamar, plaintiff in this suit, by Ward and Jones and Whitehead, his attorneys, complains against Hugh McCulloch, defendant, who hath entered his appearance herein, of a plea of trespass in the case.

For that whereas the said plaintiff heretofore, to wit, on the first day of October, in the year of our Lord one thousand eight hundred and sixty-five, was lawfully possessed as of his own property of five hundred and seventy-eight bales of upland cotton, weighing one hundred and eighty-nine thousand pounds, of the value of one hundred and fifty thousand two hundred and eighty dollars, at Thomasville, in the county of Thomas, in the State of Georgia, to wit, at the southern district of New York, and of certain four hundred and twenty-six other bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, at the city of Tallahassee, in the State of Florida, to wit, at the southern district of

New York; and being so possessed, the said plaintiff afterwards,
to wit, on the first day of November, in the year of our Lord
13 one thousand eight hundred and sixty-five, at Thomasville,
in the county of Thomas, and State of Georgia, to wit, at the southern district of New York, casually lost the said five hundred and seventy-eight bales of upland cotton, weighing one hundred and eighty-nine thousand pounds, of the value of one hundred and fifty thousand two hundred and eighty dollars, and at the city of Tallahassee, in the State of Florida, to wit, at the southern district of New York, also casually lost the said four hundred and twenty-six other bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, and the said cotton afterwards, to wit, on the day and year last aforesaid, at Thomasville, in the county of Thomas, in the State of Georgia, and at Tallahassee, in the State of Florida, to wit, at the southern district of New York, came to the possession of the said defendant by finding, yet, the said defendant well knowing the said cotton to be the property of the said plaintiff, and of right to belong and appertain to him, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, has not as yet delivered the said cotton, or any part thereof, to the said plaintiff, although often requested so to do, and hath hitherto wholly refused so to do.

And afterwards, to wit, on the day and year last aforesaid at Thomasville, in the county of Thomas, in the State of Georgia, aforesaid, and at Tallahassee, in the State of Florida, aforesaid, to wit, at the southern district of New York, converted and disposed of the said cotton to his own use, to the damage of the said plaintiff five hundred thousand dollars.

And therefore the said plaintiff brings suit, &c.

WARD AND JONES AND WHITEHEAD,
Att'ys for Pl'ff.

(Endorsed:) U. S. circuit court, southern district of New York. Gazaway B. Lamar *v.* Hugh McCulloch. Declaration. Ward and Jones and Whitehead, pl'ffs att'ys, No. 61 Wall street, N. Y. Filed Dec. 19, 1873.

14 Circuit Court of the United States for the Southern District of New York, of October Term, in the year one thousand eight hundred and seventy-three.

GAZAWAY B. LAMAR *vs.* HUGH MCCULLOCH.

And the said defendant, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either or any part thereof, in manner and form as the plaintiff has above thereof complained against him, and of this he, the said defendant, puts himself upon the country, and the said plaintiff doth the like, &c.

And for a further plea in this behalf the said defendant, by leave of the court, here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that at the several times set forth in the plaintiff's declaration herein, as at the times of the commission of the supposed grievances therein laid to this defendant's charge, he, the said defendant, was an officer or agent of the United States, to wit, the Secretary of the Treasury thereof, duly appointed, confirmed, and acting as such; that the said 578 bales of upland cotton, and the said 426 other bales of upland cotton, for the alleged trover and conversion of which this action is brought, hath, prior to the commencement of said action, to wit, in the month of November, 1865, and prior thereto, the said 578 bales in the State of Georgia, and the said 426 bales in the State of Florida, which said States of Georgia and Florida had been designated
15 as in insurrection against the lawful government of the United States by the proclamation of the President of the United States, dated July 1st, 1862, been taken, received, and collected as abandoned or captured property into the hands of certain special agents, duly appointed by the Secretary of the Treasury to receive and collect captured or abandoned property in said States, in pursuance of the provisions of the first section of the act of Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in the insurrectionary districts within the United States," and the acts amendatory thereof and supplementary thereto: that all the other provisions of said act of Congress were carried out in regard to said bales of cotton, as being captured or abandoned cotton, and all acts done by this defendant respecting said cotton were done by him, through the agents aforesaid, as such officers of the United States, as aforesaid, and in the administration of and in virtue and under color of the aforesaid acts of Congress. And the same are the several supposed wrongs and grievances mentioned and alleged in the plaintiff's declaration. Wherefore, by force of the statute in such case made and provided, to wit, section 3 of the said act of Congress, approved March 12th, 1863, and section 3 of the act of Congress approved July 27th, 1868, entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defense of the Treasury against unlawful claims," the defendant says that the said plaintiff has no legal cause of action herein, but is barred from such action, which, by force of the statutes aforesaid, is exclusively within the jurisdiction of the Court of Claims. And this the said defendant is ready to verify.

And for a further plea in this behalf the said defendant says that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that this action is brought against him for or account of private property taken by him as an officer or agent of the United States, in virtue or under color of the act of Congress approved March 12th, 1863, entitled "An act to provide for

the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States,"
16 and the acts amendatory thereof and supplementary thereto; and that the acts done by this defendant, in regard to said private property, were done by him as an officer or agent of the United States in the administration and in virtue and under color of said act of Congress approved March 12th, 1863, and said acts amendatory thereof and supplementary thereto. Whereby, and by force of the statute in such case made and provided, to wit, section 3 of the act of Congress approved July 27th, 1863, entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defense of the Treasury against unlawful claims," the defendant says that the said plaintiff has no legal cause of suit or action against him, and this the said defendant is ready to verify.

Wherefore the defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

And for a further plea in this behalf the said defendant says that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said several supposed causes of action in the said declaration mentioned did not, nor did any or either of them, accrue at any time within six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against him, the said defendant. And this the said defendant is ready to verify.

Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

And for a further plea in this behalf this defendant says that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the bales of cotton, for the recovery of the value of which this action is brought, had, prior to the institution of said action, to wit, in the month of November, 1865, and prior thereto, in the States of Georgia and Florida, been taken, received, and collected as captured and abandoned property by this defendant as Secretary of the Treasury, through special agents appointed by the Secretary of the Treasury, to receive and collect abandoned and captured property, in pursuance of an act of
17 Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the acts amendatory thereof and supplementary thereto; that prior to the time when the said cotton was taken, received, and collected as aforesaid, the said States of Georgia and Florida had been, by proclamation of the President of the United States, of July 1st, 1862, designated as in insurrection against the lawful government of the United States; that said cotton was lawfully appropriated and forwarded according to the provisions of said acts of Congress, and all the acts done by this defendant respecting said cotton were done by him as an officer or agent of the United States, namely, as Secretary of the Treasury thereof as aforesaid, and in the administration of and in virtue and under color of said acts of

Congress; that the said several supposed causes of action in the said declaration mentioned are for supposed trespasses and wrongs done and committed by this defendant as such officer or agent as aforesaid during the rebellion, which was in existence at the time enactment of the act of Congress approved March 3d, 1863, entitled "An act relating to *habeas corpus* and regulating judicial proceedings in certain cases," and which acts so alleged to be trespasses and wrongs were, at that time, done and commited by this defendant by virtue and under color of authority derived from and exercised under the said acts of Congress, and did not, nor did any or either of them, accrue at any time within two years next before the commencement of this action, in manner and form as the said plaintiff had above thereof complained against him, and this the said defendant is ready to verify.

Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

And for a further plea in that behalf interposed by this defendant, upon leave of the court therefor being first had and obtained, this defendant saith: That the plaintiff ought not to have and maintain his said action against this defendant, because he saith that prior to his said action, and after July 25th, 1862, plaintiff did not cease to aid, countenance, and abet those persons engaged in armed rebellion against the Government of the United States
18 within the districts declared to be in insurrection against said Government, in the State of Georgia and elsewhere, and at the residence of said plaintiff, and that said plaintiff did not thereafter, within sixty days, after divers public warnings and proclamations duly given and made by the President of the United States, so cease to aid, countenance, and abet such rebellion as aforesaid, and return to his allegiance to the United States; but on the contrary said plaintiff did aid and abet and encourage such rebellion against the Government of the United States, by reason whereof all the estate and property of plaintiffs, including that mentioned in plaintiff's said declaration, if in fact it did belong to said plaintiff, became the property of the said United States, and liable to seizure and use by said United States and its officers accordingly. And the property mentioned in said declaration, if, in fact, it did belong to plaintiffs, was so seized and used by and in behalf of said United States. By reason of all of which things the plaintiff ought not to have and maintain his said action as aforesaid, and of this the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

GEORGE BLISS,
U. S. Attorney.

(Endorsed:) U. S. circuit court. Gazaway B. Lamar *vs.* Hugh McCulloch. George Bliss, U. S. attorney. Filed Jan. 21, 1874.

Circuit Court of the United States for the Southern District of New York, of October term, in the year one thousand eight hundred and seventy-three.

GAZAWAY B. LAMAR *vs.* HUGH MCCULLOCH.

And the said plaintiff, as to the plea of the said defendant by him first above pleaded, and whereof he has put himself upon the country, does the like.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded, says that he, the said plaintiff, by reason of anything by him, the said defendant, in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he, the said plaintiff, says that the said defendant, Hugh McCulloch, at the time, when, &c., of his own wrong, and without the cause by the said defendant in his second plea alleged, took and seized, kept, and detained the 578 bales of upland cotton and the said 426 other bales of upland cotton in the said plea mentioned, and committed the said several trespasses in the said plea mentioned in manner and form as the said plaintiff as above in his said declaration complained; and this the said plaintiff prays may be inquired of by the country, &c.

And for a further replication to the plea of the said defendant, by him secondly above pleaded, the said plaintiff says: That he, by reason of anything by him, the said defendant, secondly above pleaded, ought not to be barred from having and maintaining his aforesaid action against him, the said defendant, because he says

20 that the said 578 bales of upland cotton and the said 426 other bales of upland cotton in said plea mentioned at the time, when, &c., were not property abandoned or captured in the States of Georgia and Florida, designated as in insurrection against the lawful government of the United States by the proclamation of the President of the United States, dated July 1st, 1862, and had not been taken, received, and collected as abandoned or captured property into the hands of special agents duly appointed by the Secretary of the Treasury to receive and collect captured and abandoned property in said States, in pursuance of the provisions of the first section of the act of Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the acts amendatory thereof and supplementary thereto, and that the same were not seized by any agent or officer of the United States as such abandoned or captured property, and that all acts done by the said defendant respecting the said cotton were not done by him through the agents aforesaid, as the Secretary of the Treasury of the United States, and in the administration of and in virtue and under color of the aforesaid acts of Congress in said plea set forth; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the said plea of the said defendant by

him thirdly above pleaded, says that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that the said 578 bales of upland cotton and the said 426 bales of other upland cotton were not private property taken by him, the said defendant, as an officer or agent of the United States, in virtue or under color of the act of Congress approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the acts amendatory thereof and supplementary thereto, and that the acts done by the said defendant in regard to said cotton were not done by him as an officer or agent of the United States, in the administration of and in virtue and under color of said act of Congress approved March 12, 1863, and the said acts amendatory thereof
21 and supplementary thereto; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the said plea of the said defendant by him fourthly above pleaded, says that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he says that the said defendant before and at the time when the said several causes of action in the said declaration mentioned accrued to the said plaintiff was in parts beyond the jurisdiction of the circuit court of the United States for the southern district of New York, and not within the limits of the State of New York, and that the said defendant afterwards, to wit, on the 24th day of September, in the year of our Lord one thousand eight hundred and seventy-three, returned within the limits of the State of New York, and within the jurisdiction of the circuit court of the United States for the southern district of New York, which said return of the said defendant was his first return within the limits of the State of New York, and within the jurisdiction of the circuit court of the United States for the southern district of New York, after the accruing of the said several causes of action, and each and every of them, to wit, at the southern district of New York aforesaid; and the said plaintiff further saith that he, the said plaintiff, commenced proceedings against the said defendant by serving a summons in this cause upon him, the said defendant, and brought his action thereupon against the said defendant within six years after his, the said defendant's, first return into the State of New York, within the jurisdiction of the circuit court of the United States for the southern district of New York, after the accruing of the said several causes of action, and each of them, to wit, at the southern district of New York aforesaid, and this the said plaintiff is ready to verify; wherefore he prays judgment, and his damages by him sustained on occasion of the wrongs and grievances mentioned and alleged in the said declaration be adjudged to him, &c.

And the said plaintiff as to the said plea of the said defendant, by him fifthly above pleaded, says that he, the said plaintiff, by reason of anything in that plea contained, ought not to be barred

22 from having and maintaining his aforesaid action thereof against the said defendant, because he says that the said 578 bales of upland cotton and the said 426 other bales of upland cotton had not, prior to the institution of said action, to wit, in the month of November, 1865, and prior thereto, in the States of Georgia and Florida, been taken, received, and collected, as captured and abandoned property by the said defendant as Secretary of the Treasury, through special agents appointed by the Secretary of the Treasury to receive and collect captured and abandoned property in pursuance of an act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and acts amendatory thereof and supplementary thereto; that said cotton was not lawfully appropriated and forwarded according to the provisions of the said act of Congress, and that all the acts done by the said defendant respecting the said cotton were not done by him as an officer or agent of the United States, namely, as the Secretary of the Treasury thereof, and in the administration of and in virtue and under color of said acts of Congress, and that the said several causes of action in the said declaration mentioned are not for supposed trespasses and wrongs done and committed by said defendant as such officer or agent during the rebellion which was in existence at the time of the enactment of the act of Congress approved March 3rd, 1863, entitled "An act relating to *habeas corpus* and regulating judicial proceedings in certain cases," and that the acts of the said defendant alleged to be trespasses and wrongs were not done and committed by the said defendant by virtue and under color of authority derived from and exercised under the said acts of Congress. And this the said plaintiff prays may be inquired of by the country, &c.

And for a further replication to the plea of the said defendant, by him fifthly above pleaded, the said plaintiff says that he, by reason of anything by him, the said defendant, fifthly above pleaded, ought not to be barred from having and maintaining his aforesaid action against him, the said defendant, because he says that the said defendant, before and at the *the* time when the said several causes of action in the said declaration mentioned accrued to the said plaintiff, was in parts beyond the jurisdiction of the circuit

23 court of the United States for the southern district of New York, and not within the limits of the State of New York, and that the said defendant afterwards, to wit, on the 24th day of September, in the year of our Lord one thousand eight hundred and seventy-three, returned within the limits of the State of New York, and within the jurisdiction of the circuit court of the United States for the southern district of New York, which said return of the said defendant was his first return within the limits of the State of New York, and within the jurisdiction of the circuit court of the United States for the southern district of New York aforesaid, after the accruing of the said several causes of action, and each and every of them, to wit, at the southern district of New York aforesaid. And the said plaintiff further saith, that he, the said plaintiff, commenced pro-

ceedings against the said defendant by serving a summons in this cause upon him, the said defendant, and brought his said action thereupon against the said defendant within two years after his, the said defendant's, first return into the State of New York, within the jurisdiction of the circuit court of the United States for the southern district of New York, after the accruing of the said several causes of action, and each of them, to wit, at the southern district of New York aforesaid. And this the said plaintiff is ready to verify; wherefore he prays judgment, and his damages by him sustained on occasion of the wrongs and grievances mentioned and alleged in the said declaration to be adjudged to him, &c.

And the said plaintiff, as to the plea of the said defendant by him sixthly above pleaded, says that he, the said plaintiff, by reason of anything in that plea contained, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he, the said plaintiff, says that the said defendant, at the time when, &c., of his own wrong and not by reason of any thing or cause or reason alleged by him, the said defendant, in his said sixth plea, took and seized and kept and detained the 578 bales of upland cotton and the 426 other bales of upland cotton in the said plea mentioned, and committed the said several trespasses in the said plea mentioned in manner and form as the said plaintiff has above in his said declaration complained; and this the said plaintiff prays may be inquired of by the country, &c.

24 And for a further replication to the plea of the said defendant, by him sixthly above pleaded, the said plaintiff says that he, by reason of anything by him, the said defendant, sixthly above pleaded, ought not to be barred from having and maintaining his aforesaid action against the said defendant, because he says that the 578 bales of upland cotton and the said 426 bales of other upland cotton in the said declaration mentioned did not become the property of the United States, and liable to seizure and use by the said United States and its officers, and were not so seized and used by and in behalf of the said United States by reason of and because the said plaintiff, prior to the commencement of his said action and after the 25th day of July, 1862, did not cease to aid, countenance and abet those persons engaged in armed rebellion against the United States, within the districts declared to be in insurrection against said Government in the State of Georgia and elsewhere, and at the place of residence of said plaintiff, and because the said plaintiff did not thereafter and within sixty days after divers public warnings and proclamations duly given and made by the President of the United States so cease to aid, countenance, and abet such rebellion as aforesaid and return to his allegiance; but, on the contrary, did aid, abet and encourage such rebellion against the Government of the United States, as by the said defendant in his sixth plea alleged; and this the plaintiff prays may be inquired of by the country.

WARD & JONES & WHITEHEAD,
Attorneys for Plaintiff, No. 61 Wall Street, New York.

(Endorsed:) U. S. circuit court, so. district of New York. Gazaway B. Lamar *v.* Hugh McCulloch. Filed Feb'y 21, 1874. Replication.

25 Circuit Court of the United States for the Southern District of New York, of October Term, in the year one thousand eight *eight* hundred and seventy-three.

HUGH MCCULLOCH *ads.* GAZAWAY B. LAMAR.

1. And the said defendant, as to the several replications of the said plaintiff to his second plea by him above pleaded, and whereof the said plaintiff hath put himself upon the country, doth the like.

2. And the said defendant, as to the replication of the said plaintiff to his third plea by him above pleaded, and whereof the said plaintiff hath put himself upon the country, doth the like.

3. And the said defendant, as to the replication of the said plaintiff to his fourth plea by him above pleaded, says that the said plaintiff ought not, by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him, the said defendant, because he says that the said defendant, before and at the time when the said several causes of action in the said declaration mentioned accrued to the said plaintiff, was within the jurisdiction of the circuit court of the United States for the southern district of New York, and was within the jurisdiction of said court for the space of six years after the said several causes of action accrued to the said plaintiff, and before the time when the summons in this action was served upon him as aforesaid, and that he was not without the jurisdiction of the said court, and that said summons was not served upon him on his first return within its jurisdiction, as the plaintiff hath alleged, and this he prays may be inquired of by the country.

26 4. And the said defendant, as to the replication of the said plaintiff to his fifth plea by him above pleaded, and whereof the said plaintiff hath put himself upon the country, doth the like.

5. And the said defendant, as to the further replication of the said plaintiff to his fifth plea by him above pleaded, says that the the said plaintiff ought not, by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him, the said defendant, because he says that the said defendant, before and at the time when the said several causes of action in the said declaration mentioned accrued to the said plaintiff, was within the jurisdiction of the circuit court of the United States for the southern district of New York, and was within the jurisdiction of said court for the space of two years after the said several causes of action accrued to the said plaintiff, and before the time when the summons herein was served upon him as aforesaid, and that he was not without the jurisdiction of said court, and that said summons was not served on him on his first return within its jurisdiction, as plaintiff hath alleged; and this he prays may be inquired of by the country.

6. And the said defendant, as to the replications of the said plaintiff to his sixth plea by him above pleaded, and whereof the said plaintiff hath put himself upon the country, doth the like.

GEORGE BLISS,
Def't's Attorney.

(Endorsed:) U. S. circuit court. Hugh McCulloch ads. Gazaway B. Lamar. Rejoinder. Filed March 13, 1874.

27 Circuit Court of the United States for the Southern District of New York, of October Term, in the year one thousand eight hundred and seventy-three.

GAZAWAY B. LAMAR *vs.* HUGH MCCULLOCH.

1. And the said plaintiff, as to the rejoinder of the said defendant to the replication of the said plaintiff to the fourth plea of the said defendant by him above pleaded, and whereof the said defendant hath put himself upon the country, doth the like.

2. And the said plaintiff, as to so much of the rejoinder of the said defendant to the replication of the said plaintiff to the fifth plea of the said defendant by him above pleaded, whereof he hath put himself upon the country, doth the like.

WARD, JONES & WHITEHEAD,
Attorneys for Plaintiff.

(Endorsed:) U. S. circuit court, so. dist. of N. Y. Gazaway B. Lamar *v.* Hugh McCulloch. *Similiter.* Ward, Jones & Whitehead, att'ys for pl'ff. Filed March 20, 1874.

28 Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR, Plaintiff, *vs.* HUGH MCCULLOCH, Defendant.

Upon reading and filing the affidavit of G. De Rosset Lamar, and the notice thereto attached, and on proof of service thereof, and upon the pleadings in this action, and on the letters testamentary issued by the surrogate of the city and county of New York to G. De Rosset Lamar, as executor of the last will and testament of the plaintiff, Gazaway B. Lamar, and on motion of Ward & Jones & Whitehead, plaintiff's attorneys, the district attorney appointing for the defendant Hugh McCulloch, it is ordered that the said T. De Rosset Lamar,

29 as executor of the last will and testament of the said Gazaway B. Lamar, deceased, have leave to continue this action in the name of the said G. De Rosset Lamar, as executor aforesaid, in the place of the said Gazaway B. Lamar, deceased, against the said Hugh McCulloch, the defendant.

Dated the 3d day of November, 1875.

W. J. WALLACE.

(Endorsed:) Circuit court of the United States for the southern district of New York. Gazaway B. Lamar *vs.* Hugh McCulloch.

Order permitting action to be continued in the name of G. De Rosset Lamar, as executor of Gazaway B. Lamar, deceased. Filed November 3, 1875. Ward & Jones & Whitehead, pl'ff's att'ys, 61 Wall —.

30 In the Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR, Plaintiff, *vs.* HUGH MCCULLOCH, Defendant.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

G. De Rosset Lamar, being duly sworn, says: That on or about the 19th day of December, 1873, Gazaway B. Lamar filed his declaration in the circuit court of the United States for the southern district of New York against Hugh McCulloch for the recovery of the value of certain cotton in said declaration mentioned and described; that issue was joined in the said action on or about the 20th day of March, 1874.

That on or about the 5th day of October, 1874, said Gazaway B. Lamar departed this life, having first made and published his
31 last will and testament, in which, amongst other things, he appointed this deponent his executor.

That on or about the 10 day of November, 1874, the surrogate of the city and county of New York caused to be issued letters testamentary to this deponent, who thereupon entered upon the execution of his duties as executor.

That said action is still pending, and no final judgment has been rendered therein.

And this deponent herewith presents his said letters testamentary to this honorable court, and prays to be admitted to come in and prosecute said suit as such executor.

G. DE ROSSET LAMAR.

Subscribed and sworn to before me, this 26th day of October, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

32 In the Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR, Plaintiff, *vs.* HUGH MCCULLOCH, Defendant.

Please take notice that upon the affidavit, a copy of which is herewith served upon you, and upon the pleadings in this action, and on the letters testamentary issued by the surrogate of the city and county of New York to G. De Rosset Lamar, as executor of the last will and testament of the above-named defendant, Gazaway B. Lamar, we shall apply to the honorable the circuit court of the United States for the southern district of New York, in the new court-house, corner Park Row and Broadway, on Wednesday next,

the 3d day of November, at 11 o'clock in the forenoon, or as
33 soon thereafter as counsel can be heard, for leave to continue this action against Hugh McCulloch in the name of G. De Rosset Lamar, as executor of Gazaway B. Lamar, deceased, in the place of the said Gazaway B. Lamar, deceased, and for such other relief as to the court may seem just and proper.

Yours, &c., WARD, JONES & WHITEHEAD,
Plaintiff's Attorneys.

New York, October 27th, 1875.

To George Bliss, Esqr., attorney for defendant.

(Endorsed:) In the circuit court of the United States for the southern district of New York. Gazaway B. Lamar *vs.* Hugh McCulloch. Original affidavit and notice. Service is hereby acknowledged this 27th day of October, 1875. Geo. Bliss, U. S. att'y. Filed Nov. 3, 1875. Ward, Jones & Whitehead, pl'ff's att'ys, 61 Wall St.

34 U. S. Circuit Court, Southern District of New York.

At a stated term of the U. S. circuit court for the southern district of New York, held in the city of New York on the 12th day of December, 1879.

Present: Hon. Samuel Blatchford, judge.

U. S. Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,
vs.
HUGH MCCULLOCH.

A motion to amend the pleadings in the above-entitled suit, wherein the defendant moved this court for leave to file and serve an additional plea and amended rejoinder, copies of which are hereto annexed, having duly come on to be heard:

Now, on motion of Stewart L. Woodford, U. S. attorney, and attorney for the defendant, and the attorney for the plaintiff consenting thereto, it is ordered that the pleadings in the above-entitled suit be, and they hereby are, amended by the additional plea and amended rejoinder, copies of which are hereto annexed.

It is further ordered that copies of said additional plea and amended rejoinder shall be forthwith served upon the attor-
35 ney for the plaintiff, and that the plaintiff shall have thirty days thereafter within which to reply to the same.

(Signed) SAMUEL BLATCHFORD.

I consent to the above order.

STEWART L. WOODFORD,
U. S. Att'y for Def't.
WARD, JONES & WHITEHEAD,
DICKERSON & BEAMAN,
Att'ys for Pl'ff.

Additional Plea for Defendant.

In the Circuit Court of the United States for the Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,

vs.

HUGH MCCULLOCH.

The defendant, by his attorney, leave of the court having been first had and obtained, comes, and, for a further plea in this behalf, says that the plaintiff ought not to be admitted by his said declaration to say that on the 1st day of October, in the year of our Lord one thousand eight hundred and sixty-five, he was lawfully possessed as of his own property of certain four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, at the city of Tallahassee, Florida, to wit, at the southern district of New York, and being so possessed the said plaintiff afterwards, to wit, on the first day of Novem-
36 ber, in the year of our Lord one thousand eight hundred and sixty-five, at the city of Tallahassee, in the State of Florida, to wit, at the southern district of New York, casually lost the said four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, and the said cotton afterwards, to wit, on the day and year last aforesaid at Tallahassee, in the State of Florida, to wit, at the southern district of New York, came to the possession of the said defendant by finding, yet the said defendant, well knowing the said cotton to be the property of the said plaintiff and of right to belong and appertain to him, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, has not as yet delivered the said cotton, or any part thereof, to the said plaintiff, although often requested so to do, and afterwards, to wit, on the day and year last aforesaid, at Tallahassee, in the State of Florida, aforesaid, to wit, at the southern district of New York, converted and disposed of the said cotton to his own use.

Because, he says, that before this suit the plaintiff, Gazaway B. Lamar, filed his petition in the Court of Claims of the United States, wherein he alleged that in the year 1865 he was the owner and in possession of 3,701 bales of cotton of the average weight of 500 pounds each, of which 3,275 were stored in the city of Savannah, Georgia, and shortly after the occupation of that city by the military forces of the United States, in January, 1865, were seized by order of Major General W. T. Sherman without the consent of the petitioner and against his will.

That no part of said cotton or its proceeds was appropriated in any way to the use of the army or navy of the United States, but was turned over by the officers seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States; that 426 bales

the 3d day of November, at 11 o'clock in the forenoon, or as
33 soon thereafter as counsel can be heard, for leave to continue this action against Hugh McCulloch in the name of G. De Rosset Lamar, as executor of Gazaway B. Lamar, deceased, in the place of the said Gazaway B. Lamar, deceased, and for such other relief as to the court may seem just and proper.

Yours, &c., WARD, JONES & WHITEHEAD,
Plaintiff's Attorneys.

New York, October 27th, 1875.

To George Bliss, Esqr., attorney for defendant.

(Endorsed:) In the circuit court of the United States for the southern district of New York. Gazaway B. Lamar *vs.* Hugh McCulloch. Original affidavit and notice. Service is hereby acknowledged this 27th day of October, 1875. Geo. Bliss, U. S. att'y. Filed Nov. 3, 1875. Ward, Jones & Whitehead, pl'ff's att'ys, 61 Wall St.

34 U. S. Circuit Court, Southern District of New York.

At a stated term of the U. S. circuit court for the southern district of New York, held in the city of New York on the 12th day of December, 1879.

Present: Hon. Samuel Blatchford, judge.

U. S. Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,
vs.
HUGH MCCULLOCH.

A motion to amend the pleadings in the above-entitled suit, wherein the defendant moved this court for leave to file and serve an additional plea and amended rejoinder, copies of which are hereto annexed, having duly come on to be heard:

Now, on motion of Stewart L. Woodford, U. S. attorney, and attorney for the defendant, and the attorney for the plaintiff consenting thereto, it is ordered that the pleadings in the above-entitled suit be, and they hereby are, amended by the additional plea and amended rejoinder, copies of which are hereto annexed.

It is further ordered that copies of said additional plea and amended rejoinder shall be forthwith served upon the attor-
35 ney for the plaintiff, and that the plaintiff shall have thirty days thereafter within which to reply to the same.

(Signed) SAMUEL BLATCHFORD.

I consent to the above order.

STEWART L. WOODFORD,
U. S. Att'y for Def't.
WARD, JONES & WHITEHEAD,
DICKERSON & BEAMAN,
Att'ys for Pl'ff.

Additional Plea for Defendant.

In the Circuit Court of the United States for the Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,
vs.
HUGH MCCULLOCH.

The defendant, by his attorney, leave of the court having been first had and obtained, comes, and, for a further plea in this behalf, says that the plaintiff ought not to be admitted by his said declaration to say that on the 1st day of October, in the year of our Lord one thousand eight hundred and sixty-five, he was lawfully possessed as of his own property of certain four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, at the city of Tallahassee, Florida, to wit, at the southern district of New York, and being so possessed the said plaintiff afterwards, to wit, on the first day of Novem-
36 ber, in the year of our Lord one thousand eight hundred and sixty-five, at the city of Tallahassee, in the State of Florida, to wit, at the southern district of New York, casually lost the said four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, and the said cotton afterwards, to wit, on the day and year last aforesaid at Tallahassee, in the State of Florida, to wit, at the southern district of New York, came to the possession of the said defendant by finding, yet the said defendant, well knowing the said cotton to be the property of the said plaintiff and of right to belong and appertain to him, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, has not as yet delivered the said cotton, or any part thereof, to the said plaintiff, although often requested so to do, and afterwards, to wit, on the day and year last aforesaid, at Tallahassee, in the State of Florida, aforesaid, to wit, at the southern district of New York, converted and disposed of the said cotton to his own use.

Because, he says, that before this suit the plaintiff, Gazaway B. Lamar, filed his petition in the Court of Claims of the United States, wherein he alleged that in the year 1865 he was the owner and in possession of 3,701 bales of cotton of the average weight of 500 pounds each, of which 3,275 were stored in the city of Savannah, Georgia, and shortly after the occupation of that city by the military forces of the United States, in January, 1865, were seized by order of Major General W. T. Sherman without the consent of the petitioner and against his will.

That no part of said cotton or its proceeds was appropriated in any way to the use of the army or navy of the United States, but was turned over by the officers seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States; that 426 bales

were seized in the months of October, November, and December, 1865, near Tallahassee, in the State of Florida, where it was then stored by Samuel G. Cabell, Treasury agent, and subsequently shipped to New York, where it was sold by Simeon Draper, United States Treasury agent, and the proceeds thereof paid into the Treasury of the United States; he further alleged that said cotton
37 was worth the sum of $1,046,250; that he had, on the 6th January, 1865, taken the oath of allegiance prescribed by the proclamation of the President of the United States, of December, 1863, and was not included in any of the classes excepted.

And the said plaintiff in said action attempted and failed to show that he was the owner of the 426 bales, which in said petition he alleged were seized by Samuel G. Cabell, Treasury agent, and subsequently shipped to New York, where it was sold by Simeon Draper, United States Treasury agent, and the proceeds thereof paid into the Treasury of the United States.

And in the said action the Honorable William A. Richardson, Secretary of the Treasury of the United States, transmitted to the Court of Claims, in answer to a call from the Court of Claims of the United States, the following information taken from the files of the Treasury Department, to wit, that S. G. Cabell shipped to New York to S. Draper, U. S. agent, 272 bales of cotton reported by him to have been collected in Florida as the property of the Importing and Exporting Company of Georgia; President, G. B. Lamar; and the net proceeds thereof, $21,594.14, were paid into the Treasury of the United States.

And such proceedings were thereupon had in said action that afterwards the cause came on for trial, and the Court, on the 2d of June, 1873, filed the following findings of fact, and no other:

"In this case the Court finds the facts to be as follows:

At the time of the capture of the city of Savannah, Georgia, in December, 1864, by the military forces of the United States under General Sherman, the claimant owned in said city ninety-one bales of sea island cotton and three thousand one hundred and eighty-four bales of upland cotton, all of which were captured by said forces and shipped to Simeon Draper, agent of the Treasury Department, at the city of New York, and there sold by him, and the proceeds thereof, amounting to $231.79 per bale for the sea island cotton, and $175.33 per bale for the upland cotton, aggregating five hundred and seventy-nine thousand three hundred and forty-three dollars and fifty-one cents ($579,343.51), paid into the Treasury of the United States."

And the following conclusion of law:

38 "Upon the foregoing facts the conclusion of law is, that the claimant is entitled to recover the proceeds of said cotton as stated."

And thereupon, afterwards, on the second day of June, 1873, judgment was ordered to be entered as follows:

"The Court, upon due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Gazaway B. Lamar do have and recover of and from the United States the net proceeds of ninety-one bales of sea island cotton, at $231.79 per bale, and 3,184 bales of upland cotton, at $175.33 per bale, amounting in the aggregate to the sum of five hundred and seventy-nine thousand three hundred and forty-three dollars and fifty-one cents ($579,343.51)."

And afterwards, to wit, on or about the 13th of April, 1874, the said sum of $579,343.51 was paid to said Gazaway B. Lamar.

And the petitioner in said suit in the Court of Claims is the same person who instituted this action, and the defendant in this action was, at the time of the seizure, shipment, and sale of the cotton alleged in said petition to have been seized near Tallahassee, in the State of Florida, Secretary of the Treasury of the United States, and the Samuel G. Cabell, alleged in said petition to have seized said cotton, was a special agent appointed by the Secretary of the Treasuary to receive and collect abandoned and captured property, in pursuance of an act of Congress approved March 12, 1863, entitled An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States, and the acts in addition and amendment thereof.

And the 426 bales of upland cotton in the possession of Gazaway B. Lamar, at the city of Tallahassee, Florida, in the declaration in this action mentioned, and the 426 bales alleged in the said petition to have been taken by Samuel G. Cabell, Treasury agent, in October, November, and December, 1865, near Tallahassee, in the State of Florida, are one and the same, and the taking in this and the said action are one and the same, they being one and the same trespass, thing, and matter, and not divers, and at one and the same instant of time
39 done; and the trover and conversion supposed in this action by this defendant was the taking, seizure, and sale of said cotton and the transfer of the proceeds thereof to the Treasury of the United States, set forth in the said petition, and the proceeds of the cotton for the alleged trover and conversion, of which this action is instituted, have been paid into the Treasury of the United States.

All of which the defendant is ready to verify.

Wherefore he prays judgment if the plaintiff ought to be admitted against the said record to say, by his declaration, that "on the 1st day of October, in the year of our Lord one thousand eight hundred and sixty-five, he was lawfully possessed, as of his own property, of certain four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, at the city of Tallahassee, Florida, to wit, at the southern district of New York, or that, being so possessed, the said plaintiff afterwards, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-five, at the city of Tallahassee, in the

State of Florida, to wit, at the southern district of New York, casually lost the said four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, or that the said cotton afterwards, to wit, on the day and year last aforesaid, at Tallahassee, in the State of Florida, to wit, at the southern district of New York, came to the possession of the said defendant by finding, yet the said defendant, well knowing the said cotton to be the property of the said plaintiff, and of right to belong and appertain to him, both contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, has not as yet delivered the said cotton, or any part thereof, to the said plaintiff, although often requested so to do, or that afterwards, to wit, on the day and year last aforesaid, at Tallahassee, in the State of Florida, aforesaid, to wit, at the southern district of New York, converted and disposed of the said cotton to his own use."

40 *Amended Rejoinder.*

In the Circuit Court of the United States for the Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,

vs.

HUGH MCCULLOCH.

The defendant, by his attorney, leave of the court having been first had and obtained, comes and to the said replications by the plaintiff secondly and thirdly as above pleaded, says: That the plaintiff ought not to be admitted by said second replication to say that the said defendant, Hugh McCulloch, at the time when, &c., of his own wrong and without the cause by the said defendant in his second plea alleged, took and seized, kept and detained the 578 bales of upland cotton and the said 426 other bales of upland cotton in the said plea mentioned, and committed the said several trespasses in the said plea mentioned, in manner and form as the said plaintiff as above in his said declaration complained, nor by the said third replication to say "that the said 578 bales of upland cotton and the said 426 other bales of upland cotton in said plea mentioned, at the time when, etc., were not" property abandoned or captured in the State- of Georgia and Florida, designated as in insurrection against the lawful government of the United States by the proclamation of the President of the United States, dated July 1, 1862, and had not been taken, received, and collected as abandoned or captured property into the hands of special agents duly appointed by the Secretary of the Treasury to receive and collect captured and abandoned property in said States, in pursuance of the provisions of the first section of the act of Congress approved March 12, 1863,

41 entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the acts amendatory thereof and supplementary thereto, and that the same was not seized

by any agent or officer of the United States as such abandoned or captured property, and that all acts done by the said defendant respecting the said cotton were not done by him through the agents aforesaid as the Secretary of the Treasury of the United States, and in the administration of and in virtue and under color of the aforesaid acts of Congress in said plea set forth :

Because, he says, that before this suit the plaintiff, Gazaway B. Lamar, brought an action against Albert G. Browne, of Salem, Mass.; Albert G. Browne, of Cambridge, Mass., and William A. Beard, of New Bedford, Mass., in the circuit court of the United States for the first circuit, and declared against the defendants in the said action, for that the said plaintiff was, January 1, 1866, in the State of Georgia, possessed of 1,890 bales of cotton, all of the value of five hundred thousand dollars, and being so possessed thereof afterwards, on the same day, lost the same, and the same, on the same day, came into the hands and possession of said defendants by finding ; yet the said defendants, well knowing the same to be the proper goods and chattels of the plaintiff, though requested, hath not delivered the same to the plaintiff, but thereafter, on the *the* same day, converted the same to their own use, to the damage of the said Lamar, as he says, the sum of one-half a million of dollars, and the defendants afterwards severally pleaded that the bales of cotton, for the recovery of the value of which the action was instituted, had, prior to the institution of said suit, to wit, in the month of August, in the year of our Lord 1865, in the State of Georgia, been taken, received, and collected as captured and abandoned property by the said Albert G. Browne and Albert G. Browne, Jr., as special agents appointed by the Secretary of the Treasury to receive and collect abandoned and captured property in pursuance of an act of Congress approved March twelfth, in the year of our Lord one thousand eight hundred and sixty-three, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the acts in addition and amendment thereof; that prior to the time when the said cotton was taken, received, and collected into the possession of
42 Albert G. Browne and Albert G. Browne, the younger, as special agents as aforesaid, the said State of Georgia had been, by the proclamation of the President of the United States, of July first, in the year of our Lord one thousand eight hundred and sixty-two, designated as in insurrection against the lawful government of the United States; that said cotton was lawfully appropriated and forwarded under the provisions of said act, and all the acts done by the defendants, Albert G. Browne and Albert G. Browne, Jr., respecting said cotton, were done by them as such agents as aforesaid, and in the administration of and in virtue and under color of the act of Congress aforesaid, and all the acts done by the defendant, William A. Beard, respecting said cotton, were done by him under the direction of and under the authority of the said defendants, Albert G. Browne and Albert G. Browne, the younger, acting as such agents, as aforesaid, and were done by him as their agent and as the agent of the United States, and in the administration of and in vir-

tue and under color of the act of Congress aforesaid. And to the said special pleas of the several defendants the plaintiff replied that the said bales of cotton, for the recovery of which the action was instituted, had not, prior to the institution of the suits, to wit, in the month of August, A. D. 1865, in said State of Georgia, been taken, received, and collected as captured and abandoned property by said defendants, Albert G. Browne and Albert G. Browne, the younger, or either of them, in manner and form as in said pleas set forth and alleged; nor were said Brownes, nor was either of them, an agent, special or otherwise, appointed in pursuance of any act of Congress, in manner and form as in said pleas alleged; nor was said cotton, nor were said bales of cotton, in said month of August, or at any other time, captured or abandoned, or in any way subject to be taken by any special agent under any act of Congress; nor was said State of Georgia, in said month of August, or at the time when said bales of cotton were taken by said defendants, designated as in insurrection against the lawful government of the United States by any proclamation of the President of the United States; nor was said cotton lawfully appropriated and forwarded under the provisions of any act of Congress; nor were the acts of said defendants,
43 Albert G. Browne and Albert G. Browne, Jr., or either of them, nor any act of said Browne and Browne, Jr., or either of them, respecting said bales of cotton, done by them as special agents, nor by either of them as special agents, in virtue of nor under color of any act of Congress, in manner and form as by said defendants in said plea alleged; nor were all the acts of the said defendant Beard, nor any of said acts done by said Beard under the direction of and under the authority of the said defendants, Browne and Browne, the younger, or either of them, acting as agents, or as an agent, under any act of Congress, nor as the agent of the United States, nor in the administration of, nor by virtue of, or under color of any act of Congress, in manner and form as by said defendant alleged in said plea.

And to the said replications of the said plaintiff the defendants, Albert G. Browne and Albert G. Browne, Jr., jointly, and the defendant, William A. Beard, severally rejoined, by joining issue upon the said replication, and the district attorney of the United States for the district of Massachusetts was, by the Attorney General of the United States, directed to appear in said suit for the said Albert G. Browne and Albert G. Browne, Jr., and Wm. A. Beard; and he thereupon conducted the defense of said action, and such proceedings were thereupon had in the said action that afterwards the said issues so joined in the said action, as aforesaid, came on for trial; and upon the said trial the jurors as to the said issues so joined as aforesaid said that the defendants were not guilty in manner and form as the plaintiff had thereof alleged in his writ and declaration.

And thereupon, afterwards, on the 14th October, 1873, it was considered by the judgment of the court in said action that the said plaintiff should take nothing by his said writ, and that the said Albert G. Browne, Albert G. Browne, Jr, and William A. Beard, de-

fendants, recover of the said Gazaway B. Lamar, plaintiff, their costs of suit; and the said judgment still remains in force.

And the plaintiff in said action, to wit, Gazaway B. Lamar, is the same person who instituted this action; and the defendants in said action, Albert G. Browne and Albert G. Browne, Jr., were officers of the United States subordinate to the defendant in this action, and the defendant in said action, Wm. A. Beard, was acting under the direction and authority of said Albert G. Browne and Albert G. Browne, Jr.

44 And the 578 bales of cotton in the possession of Gazaway B. Lamar, at Thomasville, in the county of Thomas, in the State of Georgia, in the declaration in this action mentioned, and the 1,800 bales of cotton in the possession of Gazaway B. Lamar, in the State of Georgia, in the declaration in said action mentioned, are one and the same, and the taking of the 578 bales in this action and the taking of 1,800 bales in the said action are all one taking, and the trover and conversion of the 578 bales supposed in this action by this defendant and the trover and conversion of 1800 bales in said action are one and the same trover and conversion, they being one and the same trespass, thing, and matter, and not divers, and at one and the same instant of time done.

And the proceeds of the cotton for the trover and conversion of which the said action and present suit were instituted have been paid into the Treasury of the United States.

All of which the defendant is ready to verify.

Wherefore he prays judgment if the plaintiff ought to be admitted against the said records to say by said second replication "that the said defendant, Hugh McCulloch, at the time when, &c., of his own wrong, and without the cause by the said defendant in his second plea alleged, took and seized, kept and detained the 578 bales of upland cotton and the said 426 other bales of upland cotton in the said plea mentioned, and committed the said several trespasses in the said plea mentioned, in manner and form as the said plaintiff as above in his said declaration complained."

Or by said third replication to say, "that the said 578 bales of upland cotton and the said 426 other bales of upland cotton in said plea mentioned at the time when, &c., were not" property abandoned or captured in the State- of Georgia and Florida, designated as in insurrection against the lawful government of the United States by the proclamation of the President of the United States, dated July 1, 1862, and had not been taken, received, and collected as abandoned or captured property into the hands of special agents duly appointed by the Secretary of the Treasury to receive and collect captured and abandoned property in said States in pursuance of the provisions of the first section of the act of Congress approved

45 March 12, 1863, entitled 'An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States,' and the acts amendatory thereof and supplementary thereto, and that the same was not seized by any agent or officer of the United States as such abandoned or captured property, and that all acts done by the

said defendant respecting the said cotton were not done by him through the agents aforesaid as the Secretary of the Treasury of the United States and in the administration of and in virtue and under color of the aforesaid acts of Congress in said plea set forth."

(Endorsed:) U. S. circuit court, so. dist. of N. Y. G. De Rosset Lamar, executor of Gazaway B. Lamar, *vs.* Hugh McCulloch. Order to amend pleadings. Stewart L. Woodford, U. S. attorney. U. S. circuit court. Filed Dec. 12, 1879. John I. Davenport, clerk.

U. S. Circuit Court for the Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,
vs.
HUGH MCCULLOCH.

We hereby consent that the claim of the plaintiff against the defendant in the above-entitled suit for the sum of one hundred and fifty thousand two hundred and eighty dollars, being the alleged value of 578 bales of upland cotton at Thomasville, in the county of Thomas, in the State of Georgia, mentioned and described
46 in the declaration in said suit, be discontinued, and that an order to that effect may be entered upon the minutes of the court.

WARD, JONES & WHITEHEAD,
Att'ys for Pl'ff.
STEWARRT L. WOODFORD,
Att'y for Def't.

New York, April 29th, 1881.

U. S. Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,
vs.
HUGH MCCULLOCH.

Upon reading and filing the consent hereto annexed, and upon motion of Stewart L. Woodford, U. S. attorney, for the defendant, it is ordered that the claim of the plaintiff against the defendant in the above-entitled suit for the sum of $150,280, being the alleged value of 578 bales of upland cotton at Thomasville, in the county of Thomas, in the State of Georgia, mentioned and described in the declaration in said suit, be, and the same hereby is, discontinued.

May 2d, 1881.

SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court, southern district of New York. G. De Rosset Lamar, executor of G. B. Lamar, *vs.* Hugh McCulloch. Consent and order of discontinuance of part of claim in suit. A. C. Woodford, U. S. att'y, att'y for def't. U. S. circuit court. Filed May 2, 1881. Joseph M. Deuel, clerk.

47 United States Circuit Court for the Southern District of New York, at the October Term, in the year 1883.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,

vs.

HUGH MCCULLOCH.

And now the plaintiff, by consent of the defendant's attorney, as to the said amended plea filed by leave of the court, obtained December 12, 1879, comes and demurs thereto, and for cause of demurrer says that nothing in the said plea contained ought to be held to be a bar to the plaintiff's action herein against the defendant, because the said plea shows on its face that no adjudication was had in the Court of Claims, or by law could have been had, in respect of the four hundred and twenty-six bales of cotton sued for in the plaintiff's declaration, as having been unlawfully and wrongfully taken and converted to his own use by the defendant. And this the plaintiff is ready to verify.

And for a further answer to the said amended plea the plaintiff, by consent of the defendant's attorney, files the following replication, to wit:

And the said plaintiff, as to the said amended plea of the defendant by him above pleaded, says that he, the said plaintiff, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the defendant, because in the proceeding in the Court of Claims in the said plea recited no recovery or adjudication was in fact had or obtained by the plaintiff in respect to the four hundred and twenty-six bales of cotton in the plaintiff's declaration alleged to have been wrongfully taken and converted to his own use by the defendant at or
48 near Tallahassee, in the State of Florida, and no part of the proceeds thereof has ever been paid to the plaintiff from the Treasury of the United States or otherwise, and because the four hundred and twenty-six bales of cotton in the said petition in the Court of Claims mentioned, although the same property as the four hundred and twenty-six bales of cotton in the plaintiff's declaration, charged to have been seized at Tallahassee, in the State of Florida, was the individual property of the plaintiff's testator, Gazaway B. Lamar, and no part of the same was at any time the property of the Importing and Exporting Company of Georgia, and the same was of his own wrong and without the justification in the said amended plea set up seized and converted to his own use by the defendant. And this the plaintiff prays may be inquired of by the country.

GEO. TICKNOR CURTIS,
Of Counsel with the Plaintiff.

(Endorsed:) G. De Rosset Lamar, executor of Gazaway B. Lamar, *v.* Hugh McCulloch. U. S. circuit court, southern dist. of N. Y. Pl'ff's demurrer and replication to def't's amended plea. It is hereby consented that the written demurrer and replication be filed in the office of the clerk of the U. S. circuit court for the so. dist. of

N. Y. Dated N. Y., Nov. 5, 1883. Elihu Root, U. S. att'y, att'y for def't. U. S. circuit court. Filed Nov. 9, 1883. Timothy Griffith, clerk.

49 United States Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazaway B. Lamar,
vs.
HUGH McCULLOCH.

And now the plaintiff comes, and for surrejoinder to the said amended rejoinder of the defendant says: That nothing in the said amended rejoinder ought to prevent him, the plaintiff, from maintaining his replication, secondly and thirdly by him above pleaded, in respect to the 426 bales of cotton in his said declaration alleged to have been wrongfully taken and converted to his own use by the defendant, at or near Tallahassee, in the State of Florida, or to prevent him, the plaintiff, from maintaining his action therefor against the defendant, because the cotton sued for in the action in the said amended rejoinder mentioned, wherein the said Gazaway B. Lamar was plaintiff and Albert G. Browne, of Cambridge, Massachusetts, Albert G. Browne, of Salem, Massachusetts, and William A. Beard, of New Bedford, Massachusetts, were defendants, was cotton seized and captured by the military forces of the United States, in the State of Georgia, acting under the orders of Major General Sherman, and was in the said action adjudicated to have been handed over by the military authorities of the United States to the said Browne, Browne and Beard acting as civil officers of the Treasury of the United States for the receipt, collection, and disposal of captured or abandoned property; whereas the 426 bales of cotton charged in the plaintiff's said declaration to have been seized and appropriated by the defendant at Tallahassee, in the State of Florida, were in no way involved in or affected by the judgment of the court in the said action in the said amended rejoinder referred to,
but the same were taken and appropriated by the defendant,
50 acting through his said agent, S. G. Cabell, in his own wrong,
and not under the acts of Congress relating to captured or abandoned property, and without the justification held by the court to have been valid in the said action instituted by the said Gazaway B. Lamar against the said Browne, Browne and Beard. And this the plaintiff prays may be inquired of by the country.

GEO. TICKNOR CURTIS,
Of Counsel with the Plaintiff.

(Endorsed:) G. de Rosset Lamar, executor of Gazaway B. Lamar, *vs.* Hugh McCulloch. U. S. circuit court, southern district of N. Y. Pl'ff's surrejoinder to def't's amended rejoinder. It is hereby consented that the within surrejoinder to def't's amended rejoinder be filed in the office of the clerk of the U. S. circuit court, in the second circuit. Dated N. Y., Nov. 5, 1883. Elihu Root, U. S. att'y, att'y for def't. U. S. circuit court. Filed Nov. 9, 1883. Timothy Griffith, clerk.

United States Circuit Court, in the Second Circuit. October Term, 1883.

HUGH MCCULLOCH *ads.* G. DE ROSSET LAMAR, Executor, &c.

And the said defendant saith that his said amended plea by him above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against him, the said defend-
51 ant, and the said defendant is ready to verify and prove the same when, where, and in such manner as the said court here shall direct and award.

ELIHU ROOT,
U. S. Att'y, Att'y for Def't.

(Endorsed:) U. S. circuit court, southern district of New York. Hugh McCulloch *ads.* G. de Rosset Lamar, executor, &c. Joinder in demurrer to plea in bar. Elihu Root, United States attorney, attorney for defendant. U. S. circuit court. Filed Nov. 15, 1883. Timothy Griffith, clerk.

United States Circuit Court, in the Second Circuit. October Term, 1883.

HUGH MCCULLOCH *ad sectam* G. DE ROSSET LAMAR, Executor, &c.

And the said defendant saith that the said replication of the said plaintiff to the said amended plea for him, the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against him, the said defendant, and that he, the said defendant, is not bound by law to answer the same, and this he, the said defendant, is ready to verify.

Wherefore, for want of a sufficient replication in this behalf, he, the said defendant, prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

ELIHU ROOT,
U. S. Att'y, Att'y for Def't.

52 (Endorsed:) U. S. circuit court, southern district of New York. Hugh McCulloch *ads.* G. De Rosset Lamar, executor, &c. General demurrer to replication to defendant's amended plea. Elihu Root, United States attorney, attorney for defendant. Geo. Ticknor Curtis, Esq., of counsel for plaintiff. U. S. circuit court. Filed Nov. 15, 1883. Timothy Griffith, clerk.

United States Circuit Court, Southern District of New York. October Term, 1883.

HUGH MCCULLOCH *ads.* G. DE ROSSET LAMAR.

And the said defendant, as to the said surrejoinder of the said

plaintiff to the amended rejoinder of the said defendant, and which the said plaintiff hath prayed may be inquired of by the country, doth the like.

ELIHU ROOT,
U. S. Att'y, Att'y for Def't.

(Endorsed:) U. S. circuit court, southern district of New York. Hugh McCulloch *ads.* G. De Rosset Lamar, executor, &c. Rebutter. Elihu Root, United States attorney, attorney for defendant. U. S. circuit court. Filed Nov. 15, 1883. Timothy Griffith, clerk.

53 United States Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, Executor, &c., *ads.* HUGH MCCULLOCH.

And now the plaintiff, as to the demurrer by the defendant above pleaded to his, the plaintiff's, replication to the defendant's amended plea, says that his said replication is sufficient in law for the plaintiff to have or maintain his aforesaid action against the defendant, and that the defendant is bound to answer the same, and this the plaintiff is ready to verify.

By GEO. TICKNOR CURTIS,
Of Counsel for the Plaintiff.

(Endorsed:) U. S. circuit court, southern district of New York. G. De Rosset Lamar, executor, *vs.* Hugh McCulloch. Joinder in demurrer to defendant's demurrer to plaintiff's replication to defendant's amended plea. U. S. circuit court. Filed November 19, 1883. Timothy Griffith, clerk.

54 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 20th day of October, 1884.

Present: Hon. Nathaniel Shipman, district judge for the district of Connecticut, sitting as circuit judge for the southern district of New York.

G. DE ROSSET LAMAR, as Executor, &c., *v.* HUGH MCCULLOCH.

This action having been brought to trial upon the issue of law arising upon the additional plea and demurrer thereto, and after hearing George Ticknor Curtis, Esq., of counsel for the plaintiff, in support of said demurrer, and S. B. Clarke, assistant United States attorney, and L. Kargé, of counsel for the defendant, opposed, and after due deliberation being had thereupon.

It is ordered that the plaintiff's demurrer to said additional plea be, and the same is hereby, overruled.

(Signed) N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court, southern district of New York. G. De Rosset Lamar, as executor, &c., *vs.* Hugh McCulloch. Order overruling plaintiff's demurrer to defendant's additional plea. Elihu Root, United States attorney, attorney for defendant. U. S. circuit court. Filed Oct, 20, 1884. Timothy Griffith, clerk.

55 United States Circuit Court, Southern District of New York. October Term, 1884.

Present: The Hon. Nathaniel Shipman, sitting as circuit judge for the southern district of New York.

G. DE R. LAMAR, Ex'r, etc., *vs.* HUGH MCCULLOCH.

This action having been brought to a preliminary hearing upon the defendant's demurrer to the plaintiff's replication (filed by consent) to the defendant's amended plea, and after hearing S. B. Clarke, Esq., assistant U. S. attorney, and L. Karge, of counsel for the defendant, in support of the said demurrer, and George Ticknor Curtis, Esq., of counsel for the plaintiff, in opposition thereto, and after due deliberation had—

It is ordered that the defendant's said demurrer to the plaintiff's replication be, and the same is hereby, overruled, and that the defendant answer the said replication of the plaintiff within ten days from the service of this order on him, the defendant.

N. SHIPMAN, *Judge.*

(Endorsed:) U. S. circuit court, southern district of New York. At law. G. de R. Lamar, ex'r, etc., *vs.* Hugh McCulloch. Order overruling demurrer, etc. Elihu Root, U. S. att'y, att'y for def't. U. S. circuit court. Filed Oct. 20, 1884. Timothy Griffith, clerk.

56 U. S. Circuit Court, Southern District of New York.

HUGH MCCULLOCH *ads.* G. DE ROSSET LAMAR, as Executor, &c.

And the said defendant, as to the said replication of the said plaintiff to the said additional plea of him, the said defendant, and which the said plaintiff hath prayed may be inquired of by the country, doth the like.

ELIHU ROOT,
United States Attorney, Attorney for the Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Hugh McCulloch *ads.* G. De Rosset Lamar, as executor, &c. Defendant's rejoinder. Similiter to plaintiff's replication to defendant's original plea. Elihu Root, United States attorney, attorney for defendant. To Geo. Ticknor Curtis, Esq., of counsel for plaintiff. U. S. circuit court. Filed Nov. 5, 1884. Timothy Griffith, clerk.

57 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 18th day of November, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Nathaniel Shipman, acting circuit judge.

G. DE ROSSETT LAMAR, as Executor of Gazaway B. Lamar, deceased,
vs.
HUGH MCCULLOCH.

Now comes the plaintiff, by George Ticknor Curtis, Esq., his attorney, and moves the trial of this cause. Likewise comes the defendant, by Elihu Root, Esq., United States attorney, his attorney. Thereupon a jury is empaneled, and the cause proceeded to trial. After hearing the evidence of the parties and the argument of counsel, on Thursday, Nov. 20, 1884, the court directs the jury to find a verdict for the defendant. The jury thereupon render a verdict, whereby they find for the defendant. On motion of counsel for the plaintiff the court orders that the plaintiff have a stay of proceedings on said verdict for forty-five days within which to prepare and serve a bill of exceptions.

TIMOTHY GRIFFITH, *Clerk.*

58 United States Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, as Executor, &c.,
vs.
HUGH MCCULLOCH.

The issues in this action having been brought on for trial before the Hon. Nathaniel Shipman, acting circuit judge, and a jury, at a circuit court held on the 18th, 19th, and 20th days of November, 1884, and the issues having been tried, and a verdict for the defendant having been duly rendered, by direction of the court, on the 20th day of November, 1884, and his costs having been adjusted at $85.72 dollars, now, on motion of Elihu Root, United States attorney, attorney for said defendant, it is adjudged that said defendant have judgment against the plaintiff upon the issues in this action for the sum of eighty-five and $\frac{72}{100}$ ($85.72) dollars, his taxed costs, and that he have execution therefor.

Judgment signed this 3d day of February, A. D. 1885.

JOHN A. SHIELDS,
Deputy Clerk.

59 (Endorsed:) U. S. circuit court, southern district of New York. G. De Rosset Lamar, as executor, &c., *versus* Hugh McCulloch. Judgment roll. Elihu Root, United States attorney, attorney for defendant. The order staying all proceedings in the within-entitled action is waived so far as to permit the taxation of defendant's costs herein, and also as to the entry of judgment in said within-entitled action. Dated New York, Jan. 29, 1885. Elihu Root, U. S. att'y, att'y for def't. George Ticknor Curtis for plaintiff. U. S. circuit court. Filed Feb'y 3, 1885. Timothy Griffith, clerk.

60 [Endorsed:] United States circuit court, southern district of New York. G. De Rosset Lamar, as executor, etc., *vs.* Hugh

McCulloch. Bill of exceptions. Service of a copy of the within bill of exceptions, as settled by Shipman, J., & notice of filing thereof is admitted this 26th day of Jan'y, 1885. Elihu Root, U. S. att'y, att'y for def't. U. S. circuit court. Filed Jan'y 26th, 1885. Timothy Griffith, clerk.

61 *Bill of Exceptions.*

Circuit Court of the United States for the Southern District of New York.

G. DE ROSSET LAMAR, as Executor under the last will and testament of Gazaway B. Lamar, deceased,

vs.

HUGH MCCULLOCH.

Be it remembered that on the 24th day of September, A. D. 1873, the original plaintiff in this action, Gazaway B. Lamar, then a citizen of the State of New York, commenced this action against the defendant in the supreme court of the State of New York by service of a summons therein, and afterward, to wit, on the 31st day of October, A. D. 1873, the defendant filed a petition in this court for the removal of the said action into this court, and thereupon such proceedings were had that by order of this court the said action was so removed and became docketed in this court on the 3rd day of November, 1873, the defendant appearing therein, and
62 the plaintiff also appearing therein, by their respective attorneys; and afterwards, to wit, on the 19th day of December, 1873, the plaintiff filed in this court his declaration, and thereupon issues in the action were made and joined between the parties by the several pleadings filed herein, hereinafter recited, down to the 20th day of March, 1874, after which time, the original plaintiff having deceased, his executor, G. De Rosset Lamar, became the plaintiff on the record, and other issues were made and joined in the action by the farther pleadings filed herein; to all of which *the* said pleadings, both those filed during the lifetime of the said original plaintiff, Gazaway B. Lamar, and those filed after his decease, reference is hereby made.

63 And now at the present term of court, to wit, on the 18th day of November, A. D. 1884, before the Hon. Nathaniel Shipman, United States district judge for the district of Connecticut, sitting in and holding this court, a jury was duly impanelled and sworn to try the issues between the plaintiff and the defendant in this action, made by the pleadings aforesaid, and the trial thereof was continued from day to day until the 20th day of November, in the year last aforesaid, the plaintiff being represented by his counsel, George Ticknor Curtis and Edward N. Dickerson, Esqs., and the defendant by his counsel, Elihu Root, Esq., United States district attorney for the Southern district of New York, and by —— Clark, Esq., assistant district attorney. And at the trial the plaintiff, in support of his action, introduced the following oral evidence, depositions and documentary proof, to wit:

Oral Evidence of G. De Rossett Lamar, Plaintiff in the Action.

By Mr. CURTIS:

Q. Where do you reside?

A. In New York city.

64 Q. Where?

A. In Twenty-Third street.

Q. What is your age now?

A. I am 42 years of age.

Q. Are you the son of the late Gazaway B. Lamar?

A. I am.

Q. Where did your father die?

A. He died in the city of New York.

Q. Where was his will proved?

A. It was proved in the city of New York.

Q. Are you the executor of his will?

A. I am.

Q. And are you now, as executor, the plaintiff on this record in this action?

A. I am.

Q. Where did your father reside before he first came to New York to live?

A. He was born and he resided in Georgia, in Augusta and Savannah, Georgia.

Q. When did he, if at all, come to New York to live, first before the war?

A. I suppose about 1846.

Q. 1846?

A. Yes.

Q. Down to what time did he continue to reside here?

A. I think till about 1857, when he returned to Georgia, and he returned to New York about the fall of 1858, or the spring of 1859.

65 Q. Where did he live after that?

A. He lived here then until about May of 1861.

Q. Then went where?

A. Then returned to Savannah, Georgia.

Q. What was his business, if he carried on any, in this city while he lived here?

A. He was president of the Bank of the Republic.

Q. Were you a member of his family at the time of his death; I mean did you live with him at the time of his death?

A. Yes; I was living in the same house with him; in the house of a sister of mine.

Q. Here in this city?

A. Yes, sir.

Q. Mr. Lamar, your counsel, have been served with a notice to produce a paper which is thus described: "A certain statement in the handwriting of Gazaway B. Lamar, which purports to explain his views on the subject of secession and nullification; to give his reasons for aiding the rebellion, and the course open to him in view

of the disasters that have come upon the rebels in the latter part of the war of the rebellion, and in which he states that he has written out these views as my explanation and in vindication of the
66 course I have thought best to pursue." Have you such a paper in your possession?

A. I have.

Q. Will you hand it to me?

(The witness hands a manuscript to counsel. The manuscript is marked for identification No. 1.)

Q. What is the history of this paper that has been marked by the stenographer No. 1 for identification, so far as you know?

A. My only knowledge of the paper is through having received it, as my father's executor, among the papers of his estate; among the papers that he left behind him.

Q. After his death?

A. After his death; I had no previous knowledge of it.

Q. Before your father's death did you know that there was such a paper in existence?

A. I did not, except from certain printed memorials and papers of that kind which I have seen addressed to the Senate and House of Representatives.

Q. The paper itself you never saw until it came into your hands as executor among other papers left by your father?

A. That is all I know.

Q. Has it always remained in your possession since you found it among his papers?

A. It has.

Q. You know nothing more about it?

67 A. Nothing whatsoever.

Cross-examined by Mr. CLARKE:

Q. Did you live with your father in 1861?

A. No; I was at college at that time.

Q. Do you know exactly what time he went South?

A. I do not.

Q. Do you know that he had his residence here in 1860 and 1861?

A. I do.

Q. The fore part of 1861?

A. Yes, I do.

Q. It was some time in the month of May he went South?

A. I think so; it was either April or May, but I think more likely that it was May; early in May.

Q. Do you know how he went?

A. I do not.

Q. Where were you at college?

A. At the University of Virginia.

By Mr. ROOT: Q. When did you first see your father after he went South in the spring of 1861?

A. I think it was about October of 1862.

Q. You first saw him in 1862?

A. I think so; yes.

Q. What was he engaged in then? What was he doing then?

68 A. He was president of the Bank of Commerce, at Savannah.

Q. And you remained in the South after the outbreak of the war, yourself?

A. I did.

Q. Until what time?

A. Until 1874.

Q. And your father remained there from May, 1861, until the close of the war?

A. Until 1871, I think.

Q. Until 1871?

A. Yes, I think so.

Q. What were you engaged in during the period from May, 1861, until 1866?

Mr. CURTIS: He isn't on trial.

Mr. ROOT: He is on the witness stand.

Mr. CURTIS: The business that he was engaged in, do you ask that question as affecting his credibility?

Mr. ROOT: I put the question to the witness on cross-examination.

A. I was in the army.

Mr. DICKERSON: Certainly he was.

Q. The Confederate army?

A. The Confederate army.

Q. You remained in that army until the close of the war?

A. I did.

Q. What other business was your father engaged in than the presidency of the Bank of Commerce in Savannah during the war?

69 A. I don't know at all; I know nothing of his business, except that he was president of the Bank of Commerce.

Q. Did you know anything of the business of the Georgia Importing and Exporting Company?

A. Nothing whatsoever.

Q. You knew nothing of your father's cotton business?

A. No.

(Plaintiff's counsel then read in evidence the deposition of Gazaway B. Lamar, and the deposition of John P. Boles.)

70 Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR *against* HUGH McCULLOCH.

CITY AND COUNTY OF NEW YORK, } *ss:*
Southern District of New York, }

Gazaway B. Lamar, being duly affirmed, says: That he is the plaintiff in the above-entitled cause; that the defendant has ap-

peared therein; that this action is brought to recover the value of five hundred and seventy-eight bales of cotton of the value of one hundred and fifty thousand two hundred and eighty dollars, and four hundred and twenty-six other bales of cotton of the value of one hundred and ten thousand seven hundred and sixty dollars.

That the defences are the general issue, the statute of limitations, the right to take the same as the Secretary of the Treasury of the United States under the various acts of the Congress of the United States.

That deponent has fully and fairly stated the case in this
71 cause to John E. Ward, Esq., his counsel therein, who resides at No. 37 Fifth avenue, in the city of New York, and has fully and fairly disclosed to him the facts which deponent expects to prove by the witnesses hereinafter named; that deponent is advised by his said counsel and verily believes that Gazaway B. Lamar, of the city, county, and State of New York, is a material witness and necessary for him upon the trial of this action, and that without his testimony plaintiff cannot safely go to trial; that said Gazaway B. Lamar is now in the city, county, and State of New York; that the said Gazaway B. Lamar is of the age of seventy years and upwards, and is so aged as to render it probable that he will not be able to attend as a witness at the trial of this cause; and deponent further says that he is informed and believes that Hugh McCulloch, the above-named defendant, resides at London, England, about three thousand miles distant from the city of New York, the place where the examination of said witness is expected to be taken. And that he is also informed and believes that George Bliss, the attorney of the said Hugh McCulloch, resides in the city of New York.

GAZAWAY B. LAMAR.

Affirmed to before me this 26th day of May, 1874.

[SEAL.] GURDON S. BUCK,
Notary Public, New York County.

72 Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR *against* HUGH McCULLOCH.

SIR: You will please take notice that Gazaway B. Lamar will be examined *de bene esse* before Edward L. Owen, Esq., a United States commissioner, at his office, No. 71 Wall street, New York city, on the 6th day of June, 1874, at 11 o'clock in the forenoon, as a witness for the above plaintiff, according to the act of Congress in such case made and provided, at which time and place you are entitled by law to be present and put interrogatories to said witness.

Dated New York, June 1, 1874.

Yours, &c.,

WARD, JONES & WHITEHEAD,
Attorneys for Plaintiff.

To Geo. Bliss, Esq., attorney for defendant.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Gazaway B. Lamar ag'st Hugh McCulloch. Affidavit, order, and notice of examination of G. B. Lamar *de bene esse*. Ward, Jones & Whitehead, att'ys for pl'ff, 61 Wall St., N. Y. Due and timely service of a copy of the within is hereby admitted. N. Y., June 1, 1874. George Bliss (in pencil), def't's att'y.

73 *Notice.*

Circuit Court of the United States for the Southern District of New York.

GAZAWAY B. LAMAR *ag'st* HUGH MCCULLOCH.

Please to take notice that Gazaway B. Lamar, an ancient, an aged, and infirm witness, will be examined *de bene esse*, on the part of the plaintiff in the above-entitled cause, before me (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided), at my office, No. 71 Wall street, in the city of New York, on the sixth day of June, 1874, at eleven o'clock in the forenoon of that day, at which time and place you are hereby notified to be present and put interrogatories, if you shall think fit.

Dated New York, the 1st day of June, A. D. 1874.

Yours, &c., EDWARD L. OWEN,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To George Bliss, Esq., def't's atty.

74 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } *ss:*
City, County, and State of New York, }

Be it remembered that on the sixth day of June, in the year of Lord one thousand eight hundred and seventy-four, I Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act, in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at number 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Gazaway B. Lamar, to testify and the truth to say, on the part and behalf of the plaintiff in a certain suit or matter of controversy now

pending and undetermined in the circuit court of the United States for the southern district of New York, at New York, wherein Gazaway B. Lamar is plaintiff, against Hugh McCulloch, defendant; and thereupon the said Gazaway B Lamar having been by me first cautioned and affirmed to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I
St 75 did carefully examine the said Gazaway B. Lamar, and he did thereupon depose, testify, and say as follows, viz:

I am 75 years of age; I reside in the city of New York, and have for about two years and a half. I am the plaintiff in this suit. I know the defendant. I am infirm and diseased. In the fall of 1865 I resided in the city of Savannah, Georgia, and had been residing there for about four years previous. I was at that time the owner of certain cotton, now the subject-matter of this suit. I had the cotton bought by an agent, and paid for it in the fall of 1862 and the spring of 1863. That agent is dead; he died on the 14th of July, 1863.

In the fall of 1865 that cotton was in the city of Thomasville, Georgia, and its vicinity; some of it on plantations, and some of it at the railroad depots, but the major part of it was in Thomasville, in the warehouse of Evans & Parnell, and McKinlon & Co.

Q. 1. How many bales of cotton were there in and about Thomasville in the fall of 1865?

(Objected to, as immaterial and irrelevant.)

A. Six hundred and fifty bales.

Q. 2. What was the gross weight of that cotton?

A. Three hundred and twenty-nine thousand five hundred and eighty-seven pounds, besides eight bales which were at a depot, weighing forty-one hundred and eighty-four pounds.

Q. 3. What was the value of that cotton?

(Objected to, as immaterial and irrelevant.)

A. There was scarcely a price for cotton at the time in the market at Thomasville, but I had cotton sold of the same quality.

(At this point defendant's counsel objects, as not responsive to the answer.)

Witness continues: About the same time, in the city of Sa-
76 vannah, at fifty-two (52) cents a pound; the freight for transportation from Thomasville to Savannah was ten (10) dollars a bale.

Q. 4. What is the distance from Thomasville to Savannah?

A. From one hundred and ninety to two hundred miles.

Q. 5. What was the means of transportation from Thomasville to Savannah in the fall of 1865?

A. By railroad, one hundred and forty miles to Doctortown, thence by steamers to Savannah, the railroad being broken up between Doctortown and Savannah.

Q. 6. What was the grade of this cotton?

(Objected to as above.)

A. It was the general run of the crops of the planters made in that section, that is in Florida, where the cotton was raised, which is generally considered of better quality than that raised in Georgia.

Q. 7. You have said a portion of this cotton, now the subject of controversy, was in Florida during the fall of 1865; will you state how many bales were there, and at what places in Florida, and the aggregate weight of the cotton and its value?

(Objected to as above.)

Witness refers to a list of the cotton taken from the return of Mr Boutwell, Secretary of the Treasury, made to the Court of Claims under rule, being a copy of his cotton book and invoice book held in the Treasury, said report being in the case of the witness against the United States, No. 3222, and also a memorandum made from that report by myself.

A. Four hundred and fourteen bales of upland cotton, weighing 207,615 pounds, and twelve bales of sea island cotton, weighing 6,262 pounds; there were one hundred and ninety-seven bales on the plantation of F. R. Cotten, fifty-six bales on the plantation of Col. B. W. Bellamy, twelve bales of sea island on the plantation of George A. Croom, twenty-four bales on the plantation of
77 Robert Gamble, twenty-three bales on the plantation of S. W. Parkhill, twenty-five bales on the plantation of Mrs. William Bailey, and ninety-one other bales; it was the same class of cotton and of the same valuation as that in Thomasville.

Q. 8. When and how did that cotton, the cotton in Thomasville and its vicinity, pass from your possession and from under your control?

(Objected to, as immaterial and irrelevant.)

A. A man named William A. Beard, acting under a letter from Mr. Hugh McColloch, on the 27th of September, 1865, appeared in Thomasville, and was taking the cotton when I arrived in the city; I endeavored to prevent him, and failed in the effort; I took a witness with me to his lodgings in the afternoon, and demanded the restoration of the cotton that he had taken during the day.

(At this point defendant's counsel objects to the witness testifying as to what occurred at that interview until the defendant is connected with it by competent evidence.)

Witness continues: Which he refused to surrender; I then proceeded to take a writ of bail and trover issued by Judge Hansel of the the superior court of the State of Georgia, requiring Beard——

(Counsel for defendant objects to contents of writ.)

Witness continues: To surrender the cotton, or give security for the amount of it; I went with the deputy sheriff and served it upon Beard the next day whilst he was taking more cotton out of the warehouse; Beard refused to obey, and when the sheriff and I undertook to carry him before Judge Hansell he called some negro troops and ejected us from the warehouse where the cotton was; I

left my nephew there to watch their movements whilst I went to Milledgeville to consult the Governor of the State; the Governor offered me no relief, and I proceeded to Augusta to the head-
78 quarters of Major General Steadman, then military commander of the State, and he promised me——

(Counsel for defendant objects to the witness stating what General Steadman promised.)

Witness continues: To renew his official order which he had given me on the 2d of October, 1865, to ship the cotton from Thomasville and its vicinity, which he did subsequently.

Q. 9. Did you go to Washington then or afterwards?

A. I went afterwards; I had been there before.

Q. 10. Had you been to Washington before in relation to this cotton that was seized?

A. Yes, I had.

Q. 11. When did you go to Washington?

A. In the latter part of August, 1865.

Q. 12. Why did you then go?

A. Because I had been informed that a Treasury agent named A. G. Brown, Sr., was taking my cotton at Thomasville, and I went to Mr. McCulloch, who told me that Mr. Brown had no authority to take my cotton, nor any cotton but such as had belonged to the Confederate States.

Q. 13. What transpired in your interview with Mr. McCulloch at that time?

(Objected to as immaterial and irrelevant, and as not relating to the cotton sued for in this action.)

A. After the assurances he had given me that Mr. Brown was acting without authority a clerk in his department brought him a letter from Mr. Hardaway, who is a partner in the house of McKinlen & Co., saying——

(Defendant's counsel objects to the letter unless produced.)

Witness continues: That Mr. Brown had taken 350 bales of my cotton from his warehouse and refused to pay the storage on them; Mr. McCulloch immediately ordered a telegram to direct Mr. Brown to replace the cotton and report to him.

79 Q. 14. After that telegram was sent, did anything else pass between you and Mr. McCulloch at that interview in relation to this cotton?

A. Mr. McCulloch repeated his assurances to me that neither Mr. Brown nor any of his agents was authorized to take any cotton but that which had belonged to the Confederate States, and that I might go home and be perfectly satisfied that the cotton would not be molested again.

Q. 15. Is the McCulloch, of whom you have been speaking as having had that interview with you, Hugh McCulloch, the defendant in this action?

A. He is the same person.

Further examination adjourned to the 9th inst., at 10 a. m.

JUNE 9TH.

Met pursuant to adjournment.
Present: Commissioner and attorneys for respective parties.

Mr. LAMAR continues on his direct examination:

Q. 16. After your interview with Mr. McCulloch, of which you have spoken, what did you do in relation to that cotton, or did you do anything?

(Objected to.)

A. I went to Georgia and, as soon as I conveniently could, to Thomasville to ship the cotton, having obtained a general order from General Steadman, military commander of the State.

Q. 17. Were you, or were you not, under that order, able to send that cotton from Thomasville?

(Objected to.)

A. Colonel Kimball, military commander of that district, refused to allow the cotton to be shipped at that time and until the order was endorsed by General Bramen.

80 It is stipulated and agreed by the counsel for the respective parties attending this examination that either party may object at the trial of this cause to all or any part of the testimony that may be taken on this examination, or to any question that may be propounded to the witness, with like force and effect as though the same was specifically entered from time to time at large on the minutes of the commissioner, it being expressly stipulated that all questions as to form shall be noted on the minutes.

(Counsel for the defendant objects to the use of this deposition in any way on the trial of this cause, on the ground, among others, that the witness under examination must attend upon the trial and give his testimony orally.)

Q. 18. What became of that cotton; under whose order and by whom was it removed from Thomasville and vicinity?

A. I went into the warehouse of Evans & Parnell and asked to be shown my cotton; they took me around the warehouse where the cotton was stored in different tiers, and pointed out several of them as containing my cotton; and I saw the marks on a good many bales which I recognized as the marks of my cotton; of course I could not see all the bales nor all the marks, as the cotton was piled up in tiers.

In the month of December I was informed that Mr. McCulloch's agents, A. G. Brown, Jr., and William A. Beard, had taken all my cotton and sent it off.

Q. 19. What did you do under that information that your cotton had been taken and sent off by Mr. McCulloch's agents?

A. I could do nothing at that time, as I was arrested, imprisoned, tried, and convicted of stealing a part of my own cotton by a military commission organized by the agents who took the cotton, through General Braman, and in consequence I was unable to leave

Savannah for several months. In the fall of 1866 I went to Washington to see Mr. McCulloch; had an interview with him;
81 he acknowledged that his agents had taken my cotton and showed me a list containing most of it, but some bales were missing, as I had more cotton in the warehouse than they had on their list. I demanded the restoration of it from Mr. McCulloch, and he refused, saying that I had been such a great rebel he would not give it to me, though I had furnished him at that time with a provost marshal's certificate that I had on the 6th day of January, 1865, taken the amnesty oath prescribed by the proclamation of President Lincoln, dated the 8th of December, 1863, whereby I was entitled to the restoration of all my property except slaves.

Q. 20. You have said in answer to the last interrogatory that the list of cotton shown you by Mr. McCulloch did not contain all your cotton that was in the warehouse. How many bales of your cotton that were in the warehouse were not in that list?

A. One hundred and sixty-six bales.

Q. 21. How many of your bales of cotton that were in the warehouse at Thomasville and in and about Thomasville were on the list shown you by Mr. McCulloch as cotton received by him from his agents?

A. Four hundred and eighty-four bales.

Q. 22. Was or was not this cotton, numbering four hundred and eighty-four bales, admitted by Mr. McCulloch to have been received by him from his agents?

A. Yes.

Q. 23. What did you do in relation to the cotton of which you have spoken as being in the State of Florida?

A. I went there and found it in the possession of Samuel G. Cabell, a Treasury agent, but he refused to allow me to ship it; the next I heard of it was that, in obedience to the orders of Mr. McCulloch, it had been shipped by Cabell to New York by his orders. I demanded the restoration of it also, which he refused in about the same terms as he did when I demanded the restoration of that from Thomasville.

Q. 24. In what part of Florida was this cotton of which you have last spoken, while in your possession and under your control?

A. It was in seven different plantations in and about
82 Tallahassee; it all had to be sent to Tallahassee to be shipped from there by rail.

Q. 25. Of how many bales did this lot of cotton consist?

A. Three hundred and thirty-five bales, and ninety-one bales of cotton which had been stolen from Grover's warehouse, near the line of Georgia, and were pursued and taken by Cabell, and added to the three hundred and thirty-five bales which he had taken from Florida, making a total of four hundred and twenty-six bales.

Q. 26. In all cases in which you have spoken of a Mr. McCulloch, to whom do you allude?

A. I allude to Hugh McCulloch, who was at that time Secretary of the Treasury, and whom I believe is now a resident of London, the defendant in this case?

Q. 27. Where did these interviews, of which you have spoken as having had with McCulloch, take place?

A. In the Treasury building in the city of Washington.

Q. 28. Where did Hugh McCulloch then reside?

A. I believe he resided in Washington city.

Q. 29. When did he remove to England?

A. I am not informed exactly when he did, but several years ago.

Q. 30. Since the interviews of which you have spoken, at which you demanded these lots of cotton, has Mr. McCulloch been in the State of New York; and, if so, how often to your knowledge, and when for the first time to your knowledge, after those interviews?

A. I have not seen him here at all, but I heard of his being here in October, 1873; that is the first and only time that I have heard of his being here.

Q. 31. You have spoken of a list of bales of cotton taken from your books in the possession of Mr. McCulloch. How did you lose possession of those books and how did Mr. McCulloch acquire possession of the same?

A. A few days after Sherman took possession of the city of Savannah, I think about the first of January, 1865, I received a military order to give A. G. Brown, Sr., a Treasury agent, the building of the Bank of Commerce for his office. I did so, and Mr. Brown promised me, in the presence of his clerks and upon his word of honor,
83 several times repeated, that my books and papers, then in the bank, should be safely kept and unmolested. Within a few hours after I procured a place to keep them in, and returned to get them, when he was very rude and insulting, refused to give them up, and ordered me out of the house. I used various efforts through the military authorities to procure their restoration, all in vain, until March, 1865, General Gilmore ordered them to be returned to me. Mr. Brown brought all the unimportant and useless papers, and delivered them up to me at the bank, and when asked what had become of the others, he said they had been sent to Washington, and were beyond his control.

Q. 32. Did you subsequently find them in Washington?

A. I did; in the possession of Mr. McCulloch, who refused repeatedly to restore them to me on various pretenses, one of which was that they would be important documents in my favor in any suit I might bring for my cotton.

Q. 33. Have you ever demanded possession of those books from Mr. McCulloch?

A. I did, several times, and every time was refused.

Q. Have you ever, since that time, obtained possession of those books?

A. Never.

Further examination adjourned to the 13th instant, at 10 a. m.

JUNE 13TH.

Met pursuant to adjournment.
Present: Same parties.
Examination continues.

Cross-examination:

Q. 35. In April, 1861, and for some years prior thereto, you resided in New York city, did you not?

A. I did, and was president of the Bank of the Republic.

84 In May, 1861, I changed my residence to Savannah, where I resided until about the 1st of January, 1870, when I removed to New York city, where I now reside.

Q. 36. Did you, during the late insurrection in the Southern States, in any way, directly or indirectly, aid or abet persons or combinations in armed hostility to the United States, or in any way, directly or indirectly, give them aid and comfort?

A. I did, to the Confederate States Government.

Q. 37. How many bales of cotton in all do you claim for in this action?

A. I claim for ten hundred and eighty-four bales in this suit. That includes twenty-one different lots or parcels of cotton, all of which were purchased and paid for by me prior to July 1, 1863; they were purchased of different persons.

Q. 38. How many?

A. I can't say exactly.

Q. 39. As near as you can?

A. Fourteen different persons, I think.

Q. 40. Give their names.

A. I can't give the names of all of the sellers, as part of the cotton was purchased for me by other persons.

Q. 41. Give all you can, and their addresses.

A. F. H. Cotten, of Florida; I suppose his address is Tallahassee; B. W. Bellamy, of Florida; he lives so near the Georgia line, that I do not know whether he gets his letters in Georgia or Florida, but his plantation is in Florida; Green A. Chaires, of Florida; I don't know his post office address either; Rust & Meagher, merchants in Florida; I don't know where; J. J. Walker, of Florida; I think Tallahassee; Robert Gamble, of Tallahassee, Florida; the estate of Parkhill; I don't know where the headquarters of that estate was; Mrs. Bailey and George Whitfield, both of Florida; I don't know their addresses; George A. Croom, also of Florida.

Q. 42. Did you purchase yourself of each of the persons you have just named?

A. I did not purchase a bale individually.

Q. 43. The names that you have given, then, am I to understand, are names reported to you by your agent or agents?

85 A. Yes.

Q. 44. You then know nothing more about the purchase of that cotton than what your agents told you, do you?

A. Only so much that the agent furnished me with invoices with the marks, numbers, and weight of the cotton and its cost.

Q. 45. Nothing more?

A. Yes, where it was and the receipts of the planters.

Q. 46. Question 44 repeated.

A. No more than I have stated.

Q. 47. Was all this cotton that you have referred to on this cross-examination reported to you by one agent; if so, who was he?

A. It was all reported to me by one agent, except five lots, and that agent was William W. Cheever.

Q. 48. Where does he reside?

A. He died in July, 1863.

Q. 49. When did you first employ him, or did you ever employ him?

A. I employed him in the fall of 1862, he had no business then, he was utterly bankrupt; he resided in Savannah.

Q. 50. What had been his business when you first knew him?

A. Clerk in a grocery store; he had been a commission merchant in Albany, Georgia, before the war commenced, in the firm of Ivins & Cheever; that firm failed before 1861; nobody succeeded it in its business that I know of.

Q. 51. Which five lots do you except as not having been reported to him?

A. Five that were purchased for me by the firm of Rust & Meagher.

Q. 52. Did you cause all this cotton to be stored; if so, when and where, and when did you first see it?

A. No sir; I did not cause all this cotton to be stored, most of it was left on the plantations where it was purchased; I don't know that I ever saw it all.

Q. 53. Do you know that you ever saw any of it?

A. Yes.

Q. 54. When and where?

A. In Evans & Parnell's warehouse in October, 1865, and
86 at the depots near Tallahassee, and in Tallahassee in the same month.

Q. 55. And that is all the times you have seen it?

A. That is all.

Q. 56. Did you count the number of bales that you then saw?

A. I did not count those in Evans & Parnell's warehouse, but I did count those at the depots; I don't know what depot it was near Tallahassee; I don't recollect what number, but it was on the railroad of which Houston was president, and about seventeen or eighteen miles from Tallahassee, as near as I can recollect; in which depot I counted fifty-six and in the other depot in Tallahassee I counted fifty-two bales, this comprises all the bales that I counted, and it comprises all the bales at those two depots at that time that I am now claiming for; I mean in October, 1865, somewhere about the 18th or 22d of October; I went to the outside depot first, and then directly to the Tallahassee depot; a little negro boy was driving the buggy in which I rode; nobody else was with me.

Q. 57. In October, 1865, between the 18th and 22d, was all the

rest of the cotton, except these two lots of fifty-two and fifty-six bales, at Evans & Parnell's warehouse?

A. No.

Q. 58. Was all the rest of the cotton which you now claim for, which you then saw, at that warehouse?

A. No.

Q. 59. Where else did you see some of it?

A. I did not see any more.

Q. 60. Then all the rest of the cotton you now claim for, except the fifty-two and fifty-six bales you have named, which you saw in October, 1865, were at Evans & Parnell's warehouse?

A. Yes.

Q. 61. Where was Evans & Parnell's warehouse?

A. In Thomasville, Georgia.

Q. 62. When did you go there in October, 1865?

A. Somewhere from the 20th to the 22d; I went there before I went to Tallahassee, and before I went to the outside depot.

87 Q. 63. Who went with you to Evans & Parnell's warehouse?

A. I don't recollect that anybody did.

Q. 64. How long were you there?

A. Not very long; long enough to walk about the warehouse and inspect the cotton.

Q. 65. An hour.

A. I may have been one or two hours; I don't recollect; I don't think it was longer.

Q. 66. Were there a thousand bales of cotton in that warehouse then?

A. Yes.

Q. 67. How much more?

A. Probably three or four thousand more.

Q. 68. Who did you see there?

A. Mr. Parnell, the surviving partner of the firm; nobody else that I recollect.

Q. 69. What was the name of the officer in command of Thomasville at the time of your visit?

A. If you mean the military commander, he was Colonel William K. Kimball, of the Twelfth Maine regiment.

Q. 70. Did you see the troops there, or some of them?

A. I did.

Q. 71. Any of them near the cotton warehouse?

A. I think not.

Q. 72. None of them?

A. None that I recollect.

Q. 73. Do you testify that you saw no United States soldiers or officers at or about the warehouse at the time you then visited it?

A. Not at that time.

Q. 74. Did you subsequently?

A. I did; about a week afterwards.

Q. 75. While at Thomasville the first time, did you have any interview with any persons in relation to that cotton?

A. I did with Colonel Kimball, but with nobody else that I recollect, except Parnell.

Q. 76. Did you see any troops at Tallahassee depot, or about there, when you saw the fifty-two bales?

88 A. I saw none at the depot; there were troops stationed in the suburbs of Tallahassee, I think, but at some distance from the depot.

Q. 77. Was there a guard at the depot?

A. I did not see any.

Q. 78. Might there not have been one there and you not see it?

A. I think not.

Q. 79. Did you look for one?

A. No, sir.

Q. 80. Will you testify positively that there was not one?

A. To the best of my knowledge and belief I will.

Q. 81. Question repeated.

A. I won't say anything positive.

Q. 82. Question repeated.

A. I cannot.

Q. 83. Did you see any soldiers at the outside depot or near it?

A. Not that I recollect.

Q. 84. Who was in charge of that fifty-six bales there when you saw them?

A. The depot agent; I can't recollect his name; the agent of the depot at Tallahassee was in charge of the fifty-two bales.

Q. 85. At each of these three places did you copy off the marks and numbers of any of the cotton you saw?

A. The fifty-six bales were marked B. W. B.——

Counsel for defendant stops witness.

Q. 86. Question repeated.

A. I did not.

Q. 87. Did you at either of these places make a memoranda when you saw the cotton of the marks and numbers thereon?

A. No.

Q. 88. Did you then compare the marks and numbers of the cotton with any memoranda that you then had with you?

A. I did in Evans & Parnell's warehouse, but not at the other places.

89 Q. 89. What memoranda did you have with you at the Evans & Parnell warehouse?

A. An abstract from my cotton invoice book.

Q. 90. Made when?

A. Just before I left Savannah to go there.

Q. 91. Did you keep that book?

A. The entries were made in it by Mr. Cheever before his death.

Q. 92. Were all the entries made in it by Mr. Cheever?

A. They were, or by his clerk, except some small lots, the bills of purchase of which were found among his papers after his death. I made the abstract I then had with me.

Q. 93. Did you compare all the marks and numbers of the cotton

in Evans & Parnell's warehouse that you are now claiming for with that abstract?

A. I did; all that I saw when the marks of the bales corresponded with the abstract.

Q. 94. And did you not count any of the bales or lots?

A. No.

Q. 95. Where is that abstract; have you it now?

A. I have not.

Q. 96. When did you last see it, and in whose possession?

A. I don't recollect when, where, or who had it.

Q. 97. Did you leave it at the warehouse then?

A. I think not.

Q. 98. Where next did you have occasion to use it after that?

A. Some time in November, 1865.

Q. 99. You had it then?

A. Yes.

Q. 100. Did you have it afterwards?

A. I don't recollect having seen it afterwards.

Q. 101. Did it pass from your possession then?

A. I presume it did.

Q. 102. You have no knowledge where it is now?

A. No positive knowledge.

Q. 103. To whose possession did it pass in November, 1865?

A. I don't know that it passed out of my possession in November, 1865.

90 Q. 104. Is it now under your possession, custody, or control, directly or indirectly?

A. It is not.

Q. 105. Have you no other or further recollection whatever in respect to what you did with it in November, 1865, when you say you last saw it?

A. I compared it with bales of cotton then passing through Savannah from Thomasville.

Q. 106. Question repeated.

A. I have not.

Q. 107. What means have you, then, for specifying now the marks and numbers on either of these three lots of cotton?

A. I have a certified copy of my cotton book and invoice book, furnished to me by the Secretary of the Treasury, from which I made abstracts of the marks, numbers, and weights of this cotton that I am now claiming for; that certified copy was furnished December, 1871.

Q. 108. Is that a copy of your entire invoice and cotton book, or only a part of it?

A. I think it is a copy of the whole of it, but I have not had the privilege of comparing it.

Witness exhibits a printed pamphlet.

Q. 109. Will you specify the pages of the pamphlet you exhibit that you conceive contain copies from your invoice or cotton book of entries relating to the cotton for which you are claiming in this suit?

A. I will, and hand it in at the next meeting.

Q. 110. Will there be found in the pamphlet you now produce copies of all the entries in your cotton or invoice book, relating to all the cotton claimed for in this action?

A. All but twelve bales of sea island cotton, marked "L," as I suppose, weighing 6,262 pounds, which I never saw.

Q. 111. When did you last see your original invoice book?

A. I think it was in December, 1872, as well as I recollect.

Q. 112. When you visited Evans & Parnell's warehouse, the
91 first time in October, 1865, and saw Mr. Parnell, as you say, did you make claim to own the cotton in his warehouse, or any of it?

A. I did.

Q. 113. Did you ship it?

A. No.

Q. 114. Did you exhibit any proof of ownership?

A. I did to Mr. Parnell.

Q. 115. Did he recognize you as owner?

A. Yes.

Q. 116. Did you give him any order in respect to the cotton over which he recognized your claim?

A. No.

Q. 117. Did you subsequently do so?

A. I think I gave him a written order when I was there the second time not to deliver the cotton to a Mr. Beard, who was there taking it, or preparing to take it; I did not give any other order that I recollect.

Q. 118. Did you subsequently?

A. I don't think I did.

Q. 119. Did you subsequently sell, or attempt to sell, any part of that cotton?

A. No.

Q. 120. Did you subsequently dispose of, or attempt to dispose of, that cotton in any way, directly or indirectly?

A. I did not.

Q. 121. Did you subsequently give any orders or directions to anybody to handle that cotton, in any way, for you or on your account?

A. I did.

Q. 122. Name the persons.

A. To my nephew, G. B. Lamar, Jr., and nobody else that I recollect of; this was about October 28, 1865; I think it was verbal, not in writing.

Q. 123. What did you tell him to do in that respect?

A. To put the cotton in order, and to ship it to Savannah.

Q. 124. Did you subsequently see any of your directions to him carried out, either in whole or in part?

A. No.

Q. 125. Were they carried out in whole or in part?

A. Some of it may have been put in order but not re-
92 moved; some of it was put in order about a week or ten days afterwards.

Q. 126. Why was it not moved as you directed?

A. Because Mr. A. G. Brown, Jr., an agent of Hugh McCulloch, forbid its being removed.

(Counsel for defendant objects to witness' conclusion of law in his description of the person named.)

Q. 127. What particular act, attempted to be done in your behalf in respect to the removal of this cotton under your direction, was interfered with, to your knowledge?

A. None, except what my nephew reported to me.

Q. 128. You don't know of any physical interference in your removal of the cotton from Thomasville?

A. Not at that time; not until the 28th November; I was not there then.

Q. 129. Did you ever see any of your agents interfered with by anybody while engaged in the actual shipment or removal of the Thomasville cotton?

A. No; nor of either of the other lots.

Q. 130. On that subject all you know is what Mr. Lamar or your agents reported to you?

A. No.

Q. 131. How else have you been informed?

A. I saw my nephew, in custody of a detective, put in prison in Savannah.

Q. 132. When he was arrested was he engaged in the shipment of the cotton, and was he with the cotton?

A. Yes; he was.

Q. 133. When was this?

A. About the 3d of December, 1865; this was at Savannah.

Q. 134. Had he taken the cotton from Thomasville to Savannah?

A. He had not.

Q. 135. Question 129 repeated.

A. No.

Q. 136. You did not see him until he arrived at Savannah?
93 A. I did not see him at the time he was arrested in Thomasville, but when he arrived after his arrest in Savannah.

Q. 137. At or about the time you gave orders to ship this cotton from Thomasville, did you apply to any military authority for a permit to enable you to do so?

A. I did.

Q. 138. To whom?

A. To Major General Steadman, the military commander of the State of Georgia at that time, and nobody else; this was before I gave the order to my nephew; I applied to military authority after I gave that order to my nephew for a permit; I applied to Colonel Kimball—nobody else.

Q. 139. Was it not necessary at that time that you should have a

permit from United States officers in order to ship cotton from Thomasville without interference by officers?

A. Yes.

Q. 140. Was not that one of the necessary things for shippers of cotton to be provided with according to the course of business in cotton at that time and place?

A. It was required by the military.

Q. 141. Did not your nephew acquaint you with the fact that because of the presence of the military to sustain the parties arresting or interfering with him he was unable to ship or prevented from shipping the cotton from Thomasville?

A. No.

Q. 142. Did he tell you that the troops would protect him in removing that cotton?

A. No.

Q. 143. Did he tell you that the troops were at hand to support the interference with him, in case he removed the cotton?

A. No.

Q. 144. Was not such the fact?

A. No.

Q. 145. Had the 12th Maine regiment been removed from Thomasville?

A. I don't know.

Q. 146. How recently had you been there?

94 A. About a month before; I left there the 28th of October; I had only been there twice before that in 1865, and those are the two occasions I have named.

Further cross-examination adjourned to the 16th, at 10½ a. m.

JUNE 16.

Met pursuant to adjournment.

Present: Commissioner, counsel for plaintiff, and witness.

At the request of the counsel for defendant, further cross-examination adjourned to 18th, at 10½.

JUNE 18.

Met pursuant to adjournment.

Present: Parties.

Further cross-examination adjourned to the 22d, at 10½ a. m., by the request of counsel for defendant.

JUNE 22.

Met pursuant to adjournment.

Present: Commissioner, counsel for plaintiff, and witness.

After waiting one hour beyond the time appointed for the counsel for defendant, and he not appearing, and sending no reason for his non-appearance, counsel for plaintiff moved that the examination of Mr. Lamar be closed. Motion granted. But before closing Mr. Lamar desired to correct his answer to the first direct question.

Witness states that in answering the first question he omitted to state that he had been informed that one lot of cotton—twenty or

thirty bales—in Evans & Parnell's warehouse, had been re-
95 moved previous to the taking of the cotton by Mr. McCulloch's agent, and was not there at the time the cotton spoken of was so taken.

G. B. LAMAR.

Subscribed and sworn to before me, this 22d day of June, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

JUNE 24.

By consent of the attorneys for the respective parties, the further examination of Mr. Lamar in this suit is adjourned to the 29th, at 10 a. m.

JUNE 29.

Met pursuant to adjournment.
Present: Commissioner and counsel for respective parties.

Cross-examination resumed.

Mr. LAMAR continues on cross-examination:

Q. 147. By the explanation you have last made, do I understand that you mean that there were six hundred and thirty bales of cotton at Thomasville that you are now claiming for, instead of six hundred and fifty, as you first stated?

A. I mean to state that there were between six hundred and twenty and thirty, which I now claim for as having been in the Parnell warehouse.

Q. 148. Who gave you the information that enabled you to make this explanation since your former testimony?

A. No one.

Q. 149. How came you to make the correction?

A. It occurred to my memory that I had been informed of the fact in the fall of 1865, and omitted to state it in giving my testimony.

Q. 150. Of those twenty bales did you receive the proceeds in any way?

96 A. No, sir.

Q. 151. Why, then, do you not sue for them here?

A. Because I do not think Mr. McCulloch is liable for them.

Q. 152. When you improperly used the term, Mr. McCulloch's agent, in volunteering testimony, whom do you refer to?

(Objected to, and counsel for plaintiff states that he has a right to direct the witness to answer, "that it is an assumption on the part of the counsel, and not warranted by anything that has been said," and leaves the witness to answer the question subject to this objection.)

A. I refer to A. G. Brown, Jr.

Q. 153. Whenever you have used the term, Mr. McCulloch's agent, in this examination, you mean to be understood as indicating A. G. Brown, Jr., and nobody else?

A. I mean a Mr. A. G. Brown, Jr., generally, but a Mr. William A. Beard had acted for him in the latter part of October, and before Mr. Brown arrived in November.

Q. 154. Question repeated.

A. I mean Mr. A. G. Brown, Jr.

Q. 155. Will you please now present the information called for by question 109?

A. On page 22 of the pamphlet M. P. 143 bales, the M. P. should be M. T., $\frac{B.T.}{B.}$ 66 bales, $\frac{C.S.}{J.}$ 36 bales, estate of B.; J. W. C. 97 bales; page 9, B. C. 65 bales; page 7, G. A. C. 106 bales; page 2, J. J. W. 77 bales; page 17, B. W. B. 8 bales; these last eight bales were not in Evans & Parnell's warehouse, but were in the neighborhood; page 73, W. T. 14 bales; this is all that were at Thomasville, making in all 505 bales as by the cotton book, and 120 or 130 bales that were there before the 505 bales were sent there.

The following bales were in Florida, page 22, $\frac{B.T.}{B.}$ 154 bales $\frac{C.S.}{J.}$ 98, bales; W. 91 bales; estate of J. W. C. 150 bales; pages 16 97 and 17, B. W. B. 56 bales; page 19, G. 25 bales; page 58, R. G. 24 bales; [P] 23 bales; and also twelve bales of sea island cotton, which is not in the cotton book, bought from G. A. Croom, and was ginned and packed by order of Mr. McCulloch's agent, who took them off, amounting in all to 633 bales.

Q. 156. Do the marks and numbers named in your last answer include by marks and numbers all the cotton that you are claiming in this suit?

A. Yes, except the following, as shown in the following table I have prepared:

Marks.	Bales.	Weights.	Remarks.
R.	63	29,308	Bought by Ruth &
W. R. S.	20	9,962	Meagher; sent to Thomas-
D. E. M.	17	9,163	ville.
⟨^⟩	23	11,058	
T. C.	20	10,552	20 bales out.

Q. 157. You have now given all the marks and numbers of the cotton you are claiming for?

A. Yes, in this suit.

Q. 158. Have you ever made claim by suit or otherwise against any other person, or against the United States, for any of the cotton you have just specified; if so, when?

A. I have; I claim for 426 bales of cotton, a part of this Florida cotton, in my suit in the Court of Claims against the United States, brought in 1867 or 1868, I forget which; for that and other cotton I have made no other claim against the United States for any of this cotton; I never made a claim for this cotton against any other individual.

Q. 159. Then no part of the cotton that you are now claiming for

was included in the suit against Mr. Brown, brought by you, and recently tried in Boston?

A. No part of the Florida cotton.

Q. 160. Was any part of the cotton you are claiming for in this suit included in the cotton you are claiming for in the suit you brought against A. G. Brown, Sr., and Jr., and William A. Beard, recently tried in the United States circuit court in Boston?

98 A. Yes; all that was in Thomasville and its vicinity were included in that suit.

Q. 161. Do you mean to say that all the cotton you have specified to-day, except the 633 bales of Florida cotton, so called, was included in the claim you made in that suit?

A. It was.

Q. 162. You have not entirely answered my question 158—have you ever made any other claim for the cotton in this suit?

A. I have, from the office of the Treasury Department; I have not brought any other suits against the United States or against any other individual for any of this cotton, except as I have stated.

Q. 163. Have you not brought a suit for the balance of the Florida cotton, so called, namely, for the difference between 633 bales and 426 bales, about?

A. I have not, except this.

Q. 164. Is any of the foregoing specified cotton included in your suit, brought as president of a company against Mr. McCulloch, now pending in this court?

A. No.

Q. 165. Were not the lots claimed in this suit, and claimed in that or many of them, at the same place when the war closed?

A. Generally speaking they were, but not in all cases.

Q. 166. Do you mean that most of them, in fact, were?

A. Yes; I think the majority of them were.

Q. 167. I recur to my question now, 158, and ask you what other claims you have made for the cotton in this suit, and when?

A. I presented a demand for the cotton in Thomasville and its vicinity to the Treasury Department, under the act of Congress May 18, 1872; I never made claim for the Florida cotton, except as previously expressed.

Q. 168. Have you got to the point where you can say that you have never made any other claim except as you have stated to-day?

A. Yes, sir.

Q. 169. You were in Savannah when Lee surrendered?

A. I was.

99 Q. 170. When did you first go to Thomasville about this cotton?

A. I arrived there about the 15th of October, 1865.

Q. 171. Did Mr. Brown or Mr. Beard, or any one else, about that time, show you any papers relating to the cotton you are now claiming for, signed by Mr. McCulloch?

A. Yes; Colonel Kimball showed me a circular of Mr. McCulloch's letter of September 27, 1865, which I think was written and

not printed, although I will not be sure. This was directed to A. G. Brown, Sr. That is all.

Q. 172. Did Colonel Kimball or Mr. Brown or Mr. Beard ever say to you that this cotton, or any of it, was captured and abandoned or confiscable property, or under surveillance of the United States as such, or anything to that purport?

A. No, sir.

Q. 173. Did any one ever tell you so in 1865?

A. No, sir.

Q. 174. You seem to have answered some of my questions by referring to a paper; is it in your own handwriting, and made up since I last examined you?

A. Yes; it contains a memorandum of all the cotton claimed in this suit by marks, numbers, and weights, and in reference to the pages of the pamphlet. I will sign my name to it and annex it to my deposition.

Marked Exhibit "A," E. L. O., June 29, 1874.

Q. 175. When was the first interview you had with Mr. McCulloch concerning cotton claimed by you in this suit?

A. About the 1st of September, 1865, in Washington.

Q. 176. Had you prior to that time had any interview with him in relation to the cotton?

A. No.

Q. 177. How many interviews did you have with him after this first one on this subject?

A. I can't say exactly how many; probably some five or six at different times.

Q. 178. During what period?

A. During 1866, 1867, and 1868.

Q. 179. Be more particular.

100 A. I can't state the months; I am unable to be more particular.

Q. 180. Are you sure you had five?

A. Yes; I think I had nearer ten.

Q. 181. Were all your visits to Mr. McCulloch to demand cotton?

A. Yes, and other things.

Q. 182. What other things?

A. My books and papers which had been taken from me.

Counsel for defendants stops witness as having answered his question.

Q. 183. Will you testify that you visited Mr. McCulloch five times after September, 1865, in relation to this cotton?

A. I have no doubt of it.

Q. 184. I understood you to say that in September, 1865, when you first saw him, you demanded this cotton, and that Mr. McCulloch refused it at that time?

A. No, sir, and I did not testify so; the cotton had not been taken then.

Q. 185. When did you first demand the cotton of Mr. McCulloch personally?

A. In October, 1866.

Q. 186. Not before?

A. Not personally; I did by letter.

Q. 187. When?

A. Probably in the beginning of the year 1866 in a letter written by me addressed to the Secretary; I can't be more particular about that date.

Q. 188. Was there more than one such letter?

A. Not that I recollect.

Q. 189. Did you receive any reply?

A. Not that I recollect.

Q. 190. The first communication then that you had from Mr. McCulloch in answer to your demands for this cotton was when you saw him in October, 1866?

A. Yes.

Q. 191. Did he then refuse to deliver it?

A. He did.

101 Q. 192. Where was the cotton then?

A. I don't know.

Q. 193. When and where had you last seen it?

A. In Thomasville, in October, 1865, and a part of it passing through Savannah a month or two after; I saw some of the Florida cotton in 1865 in Florida.

Q. 194. If Mr. McCulloch then refused, in October, 1866, to get you this cotton, why did you call upon him in relation to it again in 1867 or before?

A. In the hope that I might find him disposed to do me justice and deliver it to me.

Q. 195. At none of these interviews did you know where the cotton was?

A. I did not.

Q. 196. Did Mr. McCulloch tell you that it had been sold?

A. I don't recollect that he said anything particularly about the cotton.

Q. 197. Did you not make a claim for its proceeds in the United States Treasury under the act of Congress you have named?

A. I did.

Q. 198. How were you informed its proceeds were in the Treasury?

A. I had the information in various ways; I don't recollect particularly.

Q. 199. Can you testify that Mr. McCulloch never told you that the cotton had been sold and the proceeds paid into the Treasury under the directions of the Department, or to that effect?

A. I think he may have told me that the cotton had been sold, but I don't think he ever mentioned what was done with the proceeds.

Q. 200. Under whose direction did he say it had been sold?

A. I don't think he stated.

Q. 201. Did he say anything on that subject?

A. He may have done so, but I don't recollect particularly.

Q. 202. Will you testify that at your interview in October,
102 1866, Mr. McCulloch did not tell you that the cotton had been sold under the directions of the Treasury Department, or to that effect?

A. I don't think he did; all I remember is a positive refusal to deliver it.

Q. 203. You will not testify positively that he did not tell you so?

A. No.

Q. 204. When was your claim filed in the Treasury Department?

A. Do you mean under the act of Congress?

Q. 205. Yes.

A. In September, 1872.

Q. 206. Had you filed any claim to this cotton prior to that?

A. Yes; in October, 1866.

Q. 207. At the same time with your interview then with Mr. McCulloch?

A. About the same time.

Q. 208. Did you have more than one interview in that month with Mr. McCulloch?

A. I had several.

Q. 209. Did you file your claim prior to your first interview in October, 1866?

A. I don't think it was.

Q. 210. At your first interview what occurred, and how long did it last?

A. I don't recollect exactly how long it lasted. He had but one answer to give me, and that was that I was a great rebel, which he repeated several times afterwards at other intervals.

Q. 211. Was that true?

A. No; not at that time.

Q. 212. Before that time?

A. Not in my apprehension of the term.

Q. 213. Is that all that occurred at your first interview?

A. No, sir.

Q. 214. State what did occur.

A. I don't recollect the words that passed between us, except those I have stated.

Q. 215. Did your interview last three minutes?

A. I don't think it did.

103 Q. 216. Did not Mr. McCulloch then tell you he did not want to have any conversation on the subject?

A. I don't think he did.

Q. 217. Did he converse on the subject of your cotton then?

A. No.

Q. 218. How long afterwards was it that you saw him the second time?

A. I don't recollect. I had several interviews with him during the month of October.

Q. 219. Did you go each time alone in October, 1866?

A. I think I did, but Mr. Jones may have accompanied me once or twice.

Q. 220. How long did the second interview last?

A. I don't remember, but it was short.

Q. 221. Shorter than the first?

A. I don't recollect.

Q. 222. What occurred?

A. I don't recollect any of the particulars.

Q. 223. How long did the third one last?

A. I don't recollect.

Q. 224. What occurred?

A. Nor do I recollect what occurred.

Q. 225. Have you any better recollection as to the subsequent interviews?

A. Yes.

Q. 226. How long did the fourth interview last?

A. I don't recollect.

Q. 227. Who was present?

A. I don't recollect.

Q. 228. What occurred?

A. At one interview, I don't recollect which, he agreed to refer the matter of the Florida cotton to a Mr. Eames, a lawyer.

Q. 229. Is that all you recollect at these interviews in October, 1866?

A. That is all I recollect.

Further examination adjourned to the 30th, at 11 a. m.

104 U. S. Circuit Court, Southern District of New York.

GAZAWAY B. LAMAR *vs.* HUGH McCULLOCH.

NEW YORK, *June* 30, 1874.

Before Edward L. Owen, Esq., U. S. commissioner.

Pursuant to adjournment.

Parties present.

It is agreed that the remainder of the testimony from this point shall be taken by a stenographer, and that when the stenographer's minutes are transcribed the same shall be certified to by the commissioner, as though the testimony had been taken by himself, and shall be subject to the correction of the commissioner before being certified.

GAZAWAY B. LAMAR recalled.

Cross-examination resumed:

Q. 230. In answering question 158 yesterday, and the cognate questions that follow it, I understand you to say that in your suit against the United States in the Court of Claims, you claimed 426 bales out of the 633 bales of what you call in your testimony the Florida cotton; why did you not claim in that suit the 633 bales?

A. Because the 426 bales was all I could prove at that time had been taken by the agents of Mr. McCulloch.

Q. 231. As having been taken by whom?

A. By Samuel G. Cabell, Mr. McCulloch's agent.

Q. 232. What witnesses have you discovered since you made that claim who can testify upon this subject?

A. I have no witness but my cotton book.

105 Q. 233. What date was that claim made in the Court of Claims?

A. I don't recollect; it was 1867 or 1868.

Q. 234. Then the claim for what you call your Florida cotton has increased from 1867 or 1868 from 426 bales to 633 bales?

A. Yes, sir.

Q. 235. Are there any other possible sources of information to you which would tend to increase the number of bales hereafter should you receive further information?

A. I don't know of any.

Q. 236. Did you not, in 1867 or 1868, know that you had a cotton book?

A. I did; but it was not in my possession.

Q. 237. Did you not then know how much cotton you had paid for?

A. I did not.

Q. 238. In respect to the payment for this Florida cotton, will you testify that it was all paid for by your own funds prior to 1863?

A. Prior to the 1st of July, 1863.

Q. 238½. Will you testify that all the Thomasville cotton you are claiming for in this suit, to wit, 638 bales, named on Exhibit A, your memorandum, were all paid for by your funds prior to the same date?

A. Yes.

Q. 239. How much did you pay for that 638 bales?

A. I can't remember; it is in this book.

Q. 240. Can you now answer this question positively by referring to anything?

A. Yes; I could figure it out, but it would take me some time.

Q. 241. Will you testify positively what amount of those funds the 633 bales of Florida cotton, so called, cost you?

A. I can.

Q. 242. Those two sums, making 1,271 bales, constituting, as you say, all that you claim in this suit, you paid for prior to July 1, 1863?

A. I did.

Q. 243. And that cost you how much in all?

A. I could figure out and let you know how much.

106 Q. 244. Have you any idea how much of your money went for that cotton?

A. I have no specific idea.

Q. 245. As nearly as you can, without referring to any papers, how much did that cotton cost you?

A. From $60 to $80 per bale.

Q. 246. You mean upwards of $75,000, then; do you?

A. Yes; I mean upwards of $75,000.

Q. 247. Including all the charges, &c.?

A. Up to that time; I paid charges on it since the 1st of July.

Q. 248. To whom did you pay charges on it since July 1, 1863?

A. I paid charges as taxes to the Confederate States Government; I paid insurances; I paid storages, and I paid agents for superintending it.

Q. 249. State to whom.

A. I cannot tell you the particular parties.

Q. 250. And to how many different Confederate States agents or officers did you pay taxes on that cotton?

A. I can't tell you; I don't recollect.

Q. 251. What were the names of the officers to whom such payments were made, or any of them?

A. I don't recollect the names of the parties; the taxes on some of the cotton was paid by Mr. Cole, my agent; and he also paid some of the insurances.

Q. 252. Don't you know what officer he paid?

A. I do not.

Q. 253. Do you know, in fact, that he paid any except from his report to you?

A. I do not.

Q. 254. Did you ever pay any?

A. I don't think I did; Messrs. Evans & Parnell paid it.

Q. 255. Did you ever make any personal payment yourself on this cotton?

A. Only through my agents.

Q. 256. How many different people did you give money to that went, as you understand, for the purchase of the cotton you are claiming for in this suit; I really mean about the cotton prior to July 1, 1863?

A. Only two persons.

107 Q. 257. Mr. Cheever?

A. Mr. Cheever was one.

Q. 258. Who was the other?

A. The firm of Rust & Meagher.

Q. 259. Where was that firm?

A. I don't recollect; they had a store in Florida; I don't know where.

Q. 260. Where did you pay the firm of Rust & Meagher any money?

A. I paid their drafts.

Q. 261. Drafts drawn on you at Savannah?

A. Drafts drawn on me at Savannah.

Q. 262. Where were these drafts drawn from?

A. Florida.

Q. 263. Was that all?

A. Yes, sir.

Q. 264. Were not they drawn from any particular place?

A. I don't recollect.

Q. 265. Have you got those drafts?

A. No, sir.

Q. 266. What did you do with them?

A. They were taken away from me.

Q. 267. Where did you last see them?

A. In the building of the Bank of Commerce, in Savannah.

Q. 268. When?

A. About the 1st of January, 1865.

Q. 269. What circumstance made it essential for you, then, to see them?

A. All my books and papers were about to be removed out of the bank, because the possession of the bank was about to be given over to Mr. Brown.

Q. 270. These particular drafts of Rust & Meagher, did you see them in January, 1865?

A. I don't know that I saw them particularly.

Q. 271. Then you have no particular recollection of seeing these drafts there?

A. I have not.

Q. 272. When did you see them last?

A. I cannot say.

Q. 273. Have you seen them since you paid them?

108 A. I don't know that I have.

Q. 274. How much did they amount to?

A. That I cannot tell here.

Q. 275. As nearly as you can tell?

A. About $11,000.

Q. 276. How did you pay Mr. Cheever, and when?

A. I paid Mr. Cheever in various ways; I gave him bills to take with him when he went to purchase the cotton.

Q. 277. Bank bills?

A. No; they were principally State of Georgia bank money—State of Georgia bank notes; then he drew drafts on me, which I paid him; then he drew money from the State Bank of Florida, I think, was the name of the bank, and I paid those drafts.

Q. 278. In any other way?

A. That is all.

Q. 279. How much in all?

A. That I cannot tell you—about seven or eight hundred thousand dollars; not for this cotton particularly, but for this and other cotton that he purchased also.

Q. 280. Was all this prior to July 1st, 1864?

A. Yes.

Q. 281. Did you pay any other drafts for cotton?

A. Not for this cotton.

Q. 282. Did you pay more than the sums you have named for cotton prior to July 1st, 1863?

A. Yes, I paid a great many.

Q. 283. How much?

A. I purchased upwards of 15,000 bales of cotton.

Q. 284. In all?

A. Yes.

Q. 285. Expending in all how much money?

A. That I cannot tell you.
Q. 286. Upwards of how much?
A. A million and a half of dollars, and more.
Q. 287. All this in Confederate money?
A. No, sir.
Q. 288. How large a portion of it?
A. The majority of it was in Confederate States money.
Q. 289. Were all of your purchases in Confederate States money?
109 A. No, sir.
Q. 290. Were all that you purchased for other people in Confederate States money?
A. As far as I recollect, it was—there was one exception, a lot of 1,390 bales, all in Montgomery, Alabama, in which a gentleman in Liverpool was interested, and that was partly paid for in sterling exchange on him.
Q. 291. Drawn upon shipment of the cotton?
A. No, sir; the cotton was never shipped.
Q. 292. Did you sell that cotton?
A. No, sir.
Q. 293. What became of it?
A. It was burned.
Q. 294. At Montgomery?
A. At Montgomery, Alabama.
Q. 295. In 1865?
A. Yes, I think it was.
Q. 296. That is, you were so informed?
A. Yes, sir.
Q. 297. How much of that million and a half that you spent for cotton was upon your own account?
A. About one-half.
Q. 298. Upwards of seven or eight hundred thousand dollars?
A. Yes.
Q. 299. Did you have that amount of money at your command in Savannah at that time?
A. I did.
Q. 300. Belonging to yourself?
A. It didn't belong, all of it, to me.
Q. 301. How much of it belonged to you?
A. I don't recollect.
Q. 302. Did $500 of it?
A. No, sir.
Q. 303. Did $600?
A. I cannot say, exactly.
Q. 304. Did you have that amount on deposit to your credit in 1862 or 1863?
A. No, sir.
Q. 305. Where was it?
110 A. It was in the hands of other people, and was paid in to me as it fell due.
Q. 306. What other people?

A. Planters and merchants.

Q. 307. Where?

A. Principally in Georgia.

Q. 308. How did it get there?

A. I had given credit to them in various transactions.

Q. 307. When?

A. Previous to the war, a great portion of it.

Q. 310. Half a million of it?

A. No, sir.

Q. 311. Quarter of a million?

A. I cannot say how much; I never charged my memory on that point.

Q. 312. Was it over a quarter of a million?

A. No, sir.

Q. 313. Where was the balance?

A. It was either in my hands or the hands of other people; I don't know where it was; I don't recollect; there was probably some of it in the bank in Savannah, of which I was president.

Q. 314. How much of your money was at your command on deposit in that bank that you used in these purchases?

A. It was not all on deposit at one time—at different times, six or seven hundred thousand dollars.

Q. 315. I speak of 1862 and '3; what sums from which you paid for cotton?

A. When I sent Mr. Cheever off I gave him $200,000 in notes; when he drew on me and I had money in the bank I paid it; when he wanted other remittances I sent him other money?

Q. 316. That was the Bank of Commerce?

A. Yes; if I had not any money of my own I went out and borrowed it from the other banks, and paid it whenever I could.

Q. 317. What was the capital stock of that bank?

A. $500,000.

Q. 318. What were its deposits in 1862 and 1863?

A. It ranged from $400,000 to $500,000.

111 Q. 319. State what other persons you bought cotton for—I mean of this 15,000 bales.

A. I bought some for my son Charles; I don't recollect how much.

Q. 320. Was it 5,000 bales?

A. No, sir.

Q. 321. Was it 1,000?

A. I think 600 or 700; I bought some for my sister, Mrs. McLeod, in 1862, I think.

Q. 322. About how many bales?

A. Something over a 100; I bought some for my brother-in-law, Mr. Cazenove, 180 to 200 bales; Mr. Cheever bought some for a Captain Martin; he paid it out of my funds; Captain Martin paid me for most of it; but he didn't pay me all.

Q. 323. How many bales?

A. 256; that is all I recollect now.

Q. 324. That only amounts to 1,000 bales; you say you bought 15,000; were all the rest bought for yourself?

A. No.

Q. 325. For whom, then?

A. About 7,000 bales of it were bought for the the Importing and Exporting Company, of which I was president.

Q. 326. What about the rest?

A. All bought for my account.

Q. 327. Then you bought for your own account about 6,000 bales prior to July 1, 1863?

A. Yes, sir; more than that; at least that.

Q. 328. Was it more than 7,000?

A. I think it was probably more than 7,000, but I don't recollect particularly; Mr. Cheever bought 5,380 bales in one invoice.

Q. 329. Where was that?

A. In Georgia and Florida—that is, for my account.

Q. 330. All of one person?

A. I mean in one invoice he made to me; they were bought of different persons.

Q. 331. Are all those 5,300 bales specified in the pamphlet you have been consulting?

A. Yes.

112 Q. 332. Are any more of the bales bought on your own account specified in that pamphlet?

A. No, I think not.

Q. 333. That pamphlet, then, only pretends to speak of that invoice, does it?

A. This pamphlet speaks of the cotton that was bought by Mr. Cheever and contained in that invoice; it contains also the cotton bought by other parties for the Importing and Exporting Company.

Q. 334. However, that contains only 5,300 bales bought on your account?

A. Yes, sir.

Q. 335. And how many bales on the company's account?

A. I don't recollect how many; probably 7,000.

Q. 336. Probably the whole of the company's?

A. Yes; or 7,000.

Q. 337. Does that pamphlet contain and refer to the whole of the cotton purchased on account of the company by you?

A. It does, I think; amounting to between 6 and 7 thousand bales.

Q. 338. When did you begin to purchase for that company?

A. In June, 1863, I think.

Q. 339. Did Mr. Cheever purchase for that company?

A. No, sir.

Q. 340. Were any purchases for the company made through Rust & Meagher?

A. None at all.

Q. 341. Had all your purchases for your individual account been completed before you began to purchase for the company?

A. I purchased some myself individually, but not by agents.

342. Question repeated.

A. They had, mainly; though I purchased some years afterwards on my own account.

Q. 343. When did you stop purchasing for the company?

A. I ceased to purchase for the company about the 1st of August, 1863.

113 Q. 344. Did you purchase any on your own account after that?

A. Yes.

Q. 345. How many bales?

A. I don't recollect; but I purchased several lots after that, amounting in all, probably, to 5 or 6 hundred bales, and I continued to purchase until August 4, 1864; then I stopped.

Q. 346. Was the cotton that you purchased, either on your own account or for others, any considerable part of it sold or exported?

A. None of it was sold except what I sold to the Importing and Exporting Company; none of it was exported at all.

Q. 347. Did you sell some of the 6,000 bales you purchased on your own account afterwards to the Importing and Exporting Company?

A. I did.

Q. 348. About how many bales?

A. 2,500 in all; I include that 2,500 in the 7,000 I have already spoken of as bought for the company.

Q. 349. You had bought and paid for this, had you, on your own account, prior to the organization of the company?

A. I had.

Q. 350. Did the company pay you for it?

A. They did; I paid myself for it, out of its funds.

Q. 351. You had all its funds, had you not?

A. I was the manager of the company and had all the business under my control.

Q. 352. Could you appropriate those funds at your own discretion, without consulting anybody?

A. I could have done so, but I had four stockholders appointed with me on occasions of that kind, in relation to purchases.

Q. 353. How many stockholders were there in that company?

A. There were originally 481.

Q. 354. Did they subscribe money or cotton?

A. Some subscribed money and some cotton.

Q. 355. How many directors?

114 A. I think five directors and myself, making six in all.

Q. 356. How many officers?

A. We had only a book-keeper at that time.

Q. 357. You were president?

A. Yes.

Q. 358. What other officers were there?

A. A book-keeper.

Q. 359. Only a president and a book-keeper?

A. That was all.

Q. 360. No other officers?

A. Not until we got a steamboat, and then we had officers of the steamboat.

Q. 361. When was that?

A. In 1864.

Q. 362. You were organized in June, 1863, were you not?

A. Yes.

Q. 363. I understand your organization consisted of a board of direction of six, including yourself, who was president, and a book-keeper; was he a director?

A. No, sir.

Q. 364. What was his name?

A. I have even forgotten that.

Q. 365. Was all the cotton that you purchased for yourself or on account of others stored in the neighborhood of Thomasville, and its vicinity, Tallahassee depot, and Macon?

A. Yes; including Savannah; there were 250 odd bales in Eufaula, Alabama.

Q. 366. Was any of the cotton to which you have made claim by suit or otherwise against the United States, or against any person claiming to act by its authority, stored anywhere else than at Thomasville and its vicinity, and at Tallahassee depot?

A. Yes; some of it was at Savannah, some of it at Eufaula, and some at Macon, and some at Georgetown, Georgia.

Q. 367. I understand you to say in answer to question No. 60 that all the rest of the cotton you now claim for, except the 52 and 56 bales that you have named at the two depots in Florida, were at Thomasville?

A. I didn't say so.

115 Q. 368. Of all the cotton that you are now claiming for as what you call the Thomasville cotton, was it in October, 1865, all at Evans & Parnell's warehouse?

A. It was; except the eight bales at that Quitman depot.

Q. 369. Of all the cotton that you are now claiming for as what you call Florida cotton, I understand you to say that you never saw but two lots, viz, one lot of 52 bales and another lot of 56 bales, each at a different station; is that correct?

A. That is correct.

Q. 370. What do you know of the location of the remainder of that 638 bales of what you call Florida cotton, in October, 1865, where was it?

A. I know it only by the invoice furnished by Mr. Cheever, who bought it; 402 bales that were bought from Mr. Cotten and were on his plantation; 91 bales bought of George Whitfield; I don't know what plantation that was on; and 25 bales bought of Mr. Gamble, on his plantation, and 24 bales also on another plantation; 23 bales from the estate of Parkhill, and 12 bales sea island, on George Croom's plantation.

Q. 371. Had all those persons that you have just named been paid for their cotton prior to 1865?

A. They had prior to the 1st of July, 1863.

Q. 372. And had the cotton remained on their plantations unmoved since that time?

A. It had.

Q. 373. What evidence had you of the sale of the cotton except the payment of the money to Cheever?

A. I had their bills receipted for some of it; I don't recollect how much.

Q. 374. Bills of these persons you have named?

A. Yes.

Q. 375. Why didn't you go to see all that cotton as well as the two lots of 52 and 56 bales?

A. Because I was too much engaged in other things.

Q. 376. Do you know that the cotton, in fact, was in Florida in October, 1865?

A. I only know it from the report of my agent, Mr. John P. Cole.

116 Q. 377. That is all you know about it?

A. Yes, except the purchase, and paying for it.

Q. 378. What do you know about any part of that cotton coming into the hands of Mr. McCulloch?

A. I only know that Mr. McCulloch told me that he had received a part of it from Mr. Cabell.

Q. 379. Do you mean to testify that Mr. McCulloch told you that he had received a part of this cotton that you have just specified, viz., 402 bales, from Mr. Cabell?

A. He said he had received from Mr. Cabell certain cotton; I don't know that he specified what particular bales.

Q. 380. What makes you say that he said or conveyed to you the impression that he had received this particular 402 bales?

A. Only that when I was asking him to restore it he said he would refer the matter, as regards the cotton he had from Mr. Cabell, to Mr. Eames.

Q. 381. Was that all that was said?

A. That was all that was essential to this point.

Q. 382. Was that all that was said on that topic?

A. All that I recollect.

Q. 383. Why do you say that the cotton he was then referring to was these identical bales?

A. I don't know that it was.

Q. 384. Is that the only knowledge you have that these 402 bales were in fact on the plantations of the persons you have named in October, 1865, and coming under the control of the Treasury Department?

A. That is all I know, except having seen the report of Mr. Cabell to the Treasury Department.

Q. 385. Specify more particularly the document you mean.

A. The document I refer to was a report made by the Treasury Department, signed by the Secretary, addressed to the Court of Claims, dated in 1871 or 1872, in my suit against the United States then pending in the Court of Claims, being No. 3222.

Q. 386. Is that all the knowledge you have on that subject?

A. That is all I recollect at present, except as I have stated.

117 Q. 387. For ought you know to the contrary, then, except as you have stated in answer to my questions, these 402 bales of cotton, between July, 1863, and the fall of 1865, might have been burnt, used up, appropriated by military or other authority, or otherwise disposed of?

A. Except that they were reported to me by my agent, Mr. Cole, as being in Florida, and having been taken by Mr. Cabell.

Q. 388. When was that report made?

A. In 1866; I think somewhere in the first three months.

Q. 389. What is Mr. Cole's full name?

A. John P. Cole; he was my agent in Florida, and had the superintendence of all my cotton there after the death of Mr. Cheever.

Q. 390. Up to what time?

A. Up to December, 1865.

Q. 391. Is he living now?

A. I don't know whether he is or not; he was living two years ago.

Q. 392. Then you mean to say that that is all you know about it, except what Mr. Cole told you?

A. Except what he reported.

Q. 393. You included these 402 bales, did you not, in your claim against the United States in your suit in the Court of Claims?

A. I did.

Q. 394. Were you allowed for them?

A. No, sir.

Q. 395. Did you include any other cotton from Florida in that claim?

A. I did not.

Q. 396. Did you claim any cotton which was at Thomasville in the fall of 1865, or in its vicinity, in that claim?

A. Yes; I included the Thomasville cotton.

Q. 397. Did you include all the cotton which was at Thomasville in the fall of 1865, which you purchased on your own account?

A. I did.

Q. 398. Did you not include in that suit in your claim other cotton at Thomasville, which you had purchased, besides that which was purchased on your own account?

118 A. I did not.

Q. 399. None of it?

A. None of it.

Q. 400. Did you not include in that suit other cotton that you had purchased either on your own account or on account of others besides the Thomasville and Florida cotton, so called?

A. I did.

Q. 401. What other?

A. The 4,275 bales, all my Savannah cotton, and all the cotton that I had advanced money upon, and which had not been refunded; the cotton was in Savannah; no other cotton.

Q. 402. You were allowed in that suit, were you not, a recovery?

A. I was.

Q. 403. And have been paid?

A. And have been paid.

Q. 404. That suit covered, in all, how many bales?

A. 4,578 bales.

Q. 405. How many bales did you claim in that suit of Florida cotton, so called, in all 402?

A. 426, I think.

Q. 406. How many in Thomasville cotton, so called?

A. 522 bales.

Q. 407. How many, in all, of Savannah cotton, so called?

A. 4,578 bales.

Q. 408. Then the total number of bales that you claimed in that suit is more than 4,578, is it not?

A. My petition claimed for 5,526 bales, in all; the court allowed me for 3,274; Henry Lafone has a lien on 688 bales out of the 4,578, which were not allowed me, and there were 616 bales the ownership of which I could not prove before the court.

Q. 409. Was not that 616 the Florida cotton?

A. No, sir; it was cotton taken in Savannah.

Q. 410. No part of it?

A. No part of it.

Q. 411. Do you mean to say that the court did not allow you for any part of your claim for Florida cotton?

A. I do.

119 Q. 412. Did the court make any findings on the subject of your ownership of the Florida cotton?

A. Never that I know of.

Q. 413. Were you awarded for any part of the Florida cotton?

A. I was not.

Q. 414. Were you examined as a witness concerning it?

A. I was not.

Q. 415. Did you cause any person to be examined as a witness concerning its ownership?

A. I did.

Q. 416. Name the witnesses.

A. John P. Cole, F. R. Cotten, George Whitfield, George A. Croom, Smith Simpkins, and Barton W. Bellamy.

Q. 417. Any other?

A. No others.

Q. 418. For how many bales of the Thomasville cotton were you allowed in that suit?

A. None.

Q. 419. Were you examined as a witness in relation to the ownership of that cotton?

A. I was not.

Q. 420. Did you cause any persons to be examined as witnesses in relation to the Thomasville cotton?

A. I think not.

Q. 421. Did you withdraw your claim for that cotton at Thomasville?

A. By an arrangement between my counsel and the attorney of

the United States the claim- for the cotton in Thomasville and in Florida were both withdrawn.

Q. 422. Was that arrangement in writing?

A. Not that I know of.

Q. 423. Between whom was it made?

A. Between Denver & Peck, as my attorneys, and the representative of the Attorney General of the United States, and all that I know about it is what Denver & Peck reported to me.

Q. 424. Don't you know that there was nothing put in writing on that subject?

A. I don't.

120 Q. 425. Do you know that anything ever was put in writing on that subject?

A. I don't know of anything.

Q. 426. Name the officer with whom you were informed such an arrangement had been made.

A. I can't do it; I don't know who it was.

Q. 427. Name all the attorneys or counsel that you caused to act for you in that suit.

A. Denver & Peck.

Q. 428. Any others?

A. No others.

Q. 429. Did any other attorneys or counsel act for you in that suit?

A. Not that I know of.

Q. 430. Did you at any time after that suit was brought, and before money under it was paid, have any other counsel or attorneys than Denver & Peck?

A. I did.

Q. 431. Name them.

A. Benjamin F. Butler.

Q. 432. Who else?

A. Nobody else.

Q. 433. Did you employ him?

A. I did.

Q. 434. Did you authorize any other counsel at any time in the matter of that claim, after the suit was brought, to be employed in your behalf?

A. I don't recollect of any.

Q. 435. Did any other one act?

A. Several persons went down and tried to get the case after it had been appealed, dismissed from appeal, but they didn't succeed.

Q. 436. Was that suit ever before the Supreme Court of the United States upon a hearing?

A. Not that I know of.

Q. 437. When was it that you were informed that an arrangement had been made to withdraw the Thomasville and Florida cotton, so called, from that suit?

A. I think it was in the fall of 1873 when I made Mr. Peck my counsel.

Q. 438. Wasn't it about November, 1873?

121 A. Perhaps it was; I don't know; I think it must have been previous to that time.

Q. 439. Did you not bring the suit against Mr. McCulloch and the suit for the Importing and Exporting Company against Mr. McCulloch shortly after that time?

A. No, sir; it was brought before that time; I brought the suit against Mr. McCulloch in October, 1873.

Q. 440. Is it not a fact that that suit was not brought until after the arrangement you have testified to?

A. I think it is.

Q. 441. Both suits were brought ot the same time, were they not?

A. Yes.

Q. 442. Do you know if Mr. McCulloch has in any way had any personal interest in the proceeds of any of the cotton claimed for by you in this suit that you allege has been taken and sold by his agents?

A. I don't know it positively, but I suspect it very strongly.

Q. 443. What reason have you for that suspicion, as a matter of fact?

A. I have various reasons.

Q. 444. And a matter of fact?

A. His own contradictory conduct on the subject.

Q. 445. Is that all?

A. And his falsehood to me.

Q. 446. In what respect?

A. In telling me that none of this cotton was liable to be seized when I saw him in September, 1865.

Q. 447. He told you that, did he not, upon your own statement?

A. No, sir; he told me that because I went to him to complain that Mr. Brown was taking my cotton; and he said that Mr. Brown had no authority to take any cotton except that belonging to the Confederate States.

Q. 448. Then he did tell you that immediately upon your own statement?

A. Upon my own application to him.

Q. 449. At that same time?

A. Yes.

122 Q. 450. Have you any reason, as a matter of fact, to know that the proceeds of all the cotton for which you are now claiming did not go into the Treasury of the United States?

A. I have.

Q. 451. State what facts are within your knowledge on that subject.

A. I know nothing except what I heard testified to in the court by Mr. Beard himself in the suit brought by me against Brown and others, recently tried in the U. S. circuit court, in Boston.

Q. 452. Is that all the knowledge you have on that subject?

A. No.

Q. 453. State what other matter of fact is within your knowledge on that subject.

A. I saw some of the cotton passing from Thomasville through Savannah marked with Mr. Beard's initials.

Q. 454. Is that all?

A. Those are the strongest points, Mr. Beard's testimony, and having seen so many bales marked with his name.

Q. 455. Are there any other matters of fact within your knowledge on that subject?

A. Not within my personal knowledge.

Q. 456. In answer to question you said that in the fall of 1865 there were in and about Thomasville 650 bales of cotton, did you mean to imply that that was all the cotton there was in and about Thomasville at that time?

A. That belonged to me.

Q. 457. You were understood, in answering subsequent questions, to say that there were from three to four thousand bales of cotton in Evans & Parnell's warehouse, was that all the cotton that was stored in and about Thomasville?

A. That was all of my cotton in and around Thomasville; I have no personal knowledge of any other.

Q. 458. You visited that vicinity looking for cotton, did you not?

A. I did.

Q. 459. Did you not see all the quantities that were in and about Thomasville?

123 A. I don't think I did.

Q. 460. What other warehouses were there there containing cotton except Evans & Parnell's?

A. McKinnon & Co.

Q. 461. About how many bales were there there?

A. I didn't go to that warehouse; there was no cotton in it, I understood.

Q. 462. What other warehouse was there?

A. Cotton was stored in the stores of different people, more or less, not warehouses, but I can't say how much.

Q. 463. Some in private dwellings, was there not?

A. Not that I know of.

Q. 464. How many bales were there in and about Thomasville?

A. I cannot tell you.

Q. 465. Didn't you visit the places where you learned there were quantities of cotton stored when you were at Thomasville in 1865, in the pursuit of yours?

A. I didn't visit any place, except where I expected to find my own cotton—where I had reason to expect to find it.

Q. 466. Did you see any large quantities of cotton about that place other than at Evans & Parnell's warehouse?

A. I did not.

Q. 467. Is it not true that there were not over about 4,000 bales in and about Thomasville at that time?

A. I don't know.

Q. 468. As far as you can judge, from your visit there, then?

A. I should judge there were more.

Q. 469. Were there 5,000?

A. I cannot say.

Q. 470. To the best of your recollection, could you say there were 5,000?

A. No; I should think not.

Q. 471. In your answer to one of the questions you say that you took out a writ from the superior court of the State of Georgia, against Mr. William A. Beard, respecting cotton which was in the same warehouse with cotton you are claiming in this suit, and that in the execution of that writ there was interference with the
124 sheriff, supported by negro troops; were not the troops that you spoke of United States soldiers?

A. I don't know.

Q. 472. You were there, were you not?

A. I was.

Q. 473. You saw the soldiers, did you not?

A. I saw some of them.

Q. 473½. Did you ever see more than two kinds of soldiers in that State in 1864 and '5, viz., Confederate and United States soldiers, and are you not able to distinguish between them when you see them?

A. I don't know that a man is a soldier because he has a uniform on; I don't know that he is a soldier of the United States at all.

Q. 474. Were these men in uniform at all, and had they any arms?

A. They were in uniform, and I think they had bayonets.

Q. 475. Was it not the usual uniform of the United States army?

A. That I don't know.

Q. 476. Do you know the uniform of the United States troops?

A. I do not.

Q. 477. Were you not at that time able to distinguish the uniform of a United States soldier from that of any other soldier?

A. I might have drawn my own conclusions, but I don't know that I should have been correct.

Q. 478. Do you want to make any explanation of this part of your testimony?

A. No.

Q. 479. You say, in answer to question 8, that "that was some kind of an order of Gen. Stedman's;" was that in writing?

A. It was.

Q. 480. Have you the original of it?

A. I have not.

Q. 481. Did you see the original?

A. I did; a copy of it is in this pamphlet at page 192.

125 Q. 482. How long did your interview with Mr. McCulloch last when you complained to him, in September, 1865, that a Treasury agent was taking your cotton?

A. Probably half an hour.

Q. 483. Who was present with you?

A. I don't recollect who was present all the time; Mr. Kauffman was in part of the time.

Q. 484. Did you go alone?

A. I don't think I did.

Q. 485. While you were there did he telegraph and receive an answer?

A. He ordered a telegraph; I don't think he received any answer.

Q. 486. In answer to questions 12 and 13, have you stated all that occurred at that interview?

A. All that I recollected of it, except that I requested of him a letter, and he said it was unnecessary.

Q. 487. He didn't give you a letter, did he?

A. He did not.

Q. 488. Have you ever made claim for 350 bales of cotton taken from McKinnon's warehouse?

A. I made a claim, and it is included in the suit of the Importing and Exporting Company against Mr. McCulloch.

Q. 489. Did McKinnon & Co. know that it was company's, and not yours personally?

A. I don't know; I think they did.

Q. 490. They reported that it was your cotton, did they?

A. It was stored in their warehouse in the name of the company.

Q. 491. As far as the company's cotton is concerned, has it not always been claimed by you in your different controversies until the suit recently brought in the name of the company?

A. I don't understand the question.

Q. 492. In your different controversies with the United States, or with officers claiming to act under the United States, in respect to cotton, have you not made claim in any way to the same cotton that is now included in the suit brought by the Importing and Exporting Company against Mr. McCulloch, in connection with your claim for the cotton you are suing for in this suit?

(Objected to, as irrelevant and improper.)

126 A. I demanded the return of the cotton of Mr. McCulloch.

Q. 493. When was that?

A. In 1866, when I went there for the purpose.

Q. 494. Had you ever before that made a special distinction in making claims for your cotton to the United States, or to any officers claiming to act under the United States, between your own cotton and cotton that you now say belonged to the Importing and Exporting Company?

A. I always made a discrimination.

Q. 495. When you saw Mr. McCulloch, in September, 1865, did you make that discrimination to him?

A. I did not.

Q. 496. Did Mr. McCulloch know from anything you stated to him at that time that any part of the cotton in which you were interested, and for which you were claiming, in connection with the cotton you are now claiming for, was cotton that belonged to that company, and not to yourself?

A. Only from what Kauffman said to him in my presence.

Q. 497. What was that?

A. Mr. Kauffman said they had no right to take any of the company's cotton, because they had released cotton of the Chicora Company of Charleston.

Q. 498. This was the cotton claimed in a conversation with Mr. McCulloch, was it not?

A. In my presence.

Q. 499. Did Mr. McCulloch give any order to you at that time?

A. He did not to me.

Adjourned to Wednesday, July 1, at 11 a. m.

NEW YORK, *July* 1, 1874.

Met pursuant to adjournment.

Cross-examination continued:

Q. 500. Did Mr. McCulloch give you to understand at that
127 or any other interview that a reason why your applications for cotton were not favorably entertained by him was because, as he said, you had been a rebel?

A. He did.

Q. 501. Did he give you to understand that the matter was within the control of the Treasury Department; I mean the matter of the removal of the cotton and its disposition?

A. He did.

Q. 502. I understood you to say that you were tried and convicted by a military commission?

A. Yes.

Q. 503. When and where was that?

A. The latter part of December, 1865, in Savannah.

Q. 504. Who was the president of that commission?

A. Mr. Ihsley, I think, was the name, from Illinois.

Q. 505. Can you give his rank?

A. I think they call him a colonel.

Q. 506. Were the proceedings approved by the War Department?

A. I don't know.

Q. 507. Have you a record of those proceedings, or an authenticated copy thereof?

A. I have.

(Plaintiff's counsel objects to any reference to that proceeding, and subject to which objection consents that it be so identified as to be capable of being referred to on trial, if decided to be legal testimony.)

For the purpose of this identification, witness states: It is a certified copy of the record of the trial of G. B. Lamar, before a military court of the city of Savannah, in December, 1865; the commission was organized by General Brannan.

Q. 508. Did you ever show a cotton list to Mr. McCulloch, comprising a list of your cotton, or cotton claimed by you?

A. I did.

Q. 509. When first?

128 In October, 1866.

Q. 510. Not before?

A. Not that I recollect.

Q. 511. Did you leave that list with him?

A. I did.

Q. 512. Was it handed to Mr. Culloch in your presence?

A. Yes.

Q. 513. Have you seen it since?

A. I think I have seen a part of it since.

Q. 514. How long a document was it?

A. Probably two or three pages of foolscap.

Q. 515. Is it not printed in full in the pamphlet you have referred to?

A. No.

Q. 516. No part of it?

A. No.

Q. 517. How many bales of cotton did it allude to?

A. I think it alluded to the Thomasville cotton and the Florida cotton, both?

Q. 518. You mean both lots so called in this suit?

A. Yes.

Q. 519. Did the list refer to any other cotton?

A. Not at that time.

Q. 520. Is that the list that you refer to in answering question 19?

A. It was made by myself and presented by myself, and presented by my counsel, accompanied with documents showing that the property belonged to me; that I had purchased and paid for it, and that I had taken the oath under President Lincoln's proclamation.

Q. 521. Did the list you presented include, attached to it, the oath?

A. It included, attached to it, a copy of my having taken the oath, signed by the provost marshal, before whom it was taken.

Q. 522. What was his name?

A. Ira B. Seymour.

129 Q. 523. So that, as I understand you, the original list of the cotton that you presented and left with the Treasury Department shows the original signature of officer Seymour?

A. Yes.

Q. 524. And that was not the list that Mr. Culloch showed you on your interview with him in the fall of 1866?

A. No.

Q. 525. Was it at your first interview in the fall of 1866 with Mr. McCulloch that he showed you a list?

A. I think it was, but I am not sure.

Q. 526. How long did that interview last?

A. Probably half an hour.

Q. 527. Is that one of the interviews that you testified about yesterday?

A. Yes.

Q. 528. Who else was present?

A. I think Mr. Jones, my attorney, and Baron de Zeng.
Q. 529. Did he hand this list he produced to you?
A. I don't recollect particularly.
Q. 530. You didn't take it away?
A. No.
Q. 531. What was said by him in your presence about it?
A. He gave me to understand that that contained a list of the cotton that his agents had taken, according to their report.
Q. 532. Had the cotton then been sold?
A. I don't know.
Q. 533. Had it been shipped to New York?
A. I presume it had, but I don't know.
Q. 534. Was nothing said upon that subject during that interview?
A. I don't recollect of anything specially on that subject.
Q. 535. Hadn't you been informed prior to that, or were you not informed at that interview that the cotton had been shipped to Simeon Draper?
A. I think it is very probable, but I don't recollect particularly.
Q. 536. You will not testify that you were not so informed?
A. No.
130 Q. 537. In answer to questions 21 and 22 you say that on the list shown you by Mr. McCulloch there was mention of 484 bales of Thomasville cotton?
A. Yes, sir.
Q. 538. And did Mr. McCulloch admit that it had been taken by his subordinates?
A. Yes.
Q. 539. When did he say it had been taken?
A. I don't recollect that he said exactly what time. It had been taken previous to that interview, though.
Q. 540. Wasn't it more than a year previous?
A. Not quite a year, I should think, because this interview took place in October, 1866, and the cotton was not removed until November, 1865.
Q. 541. Was not some of the cotton removed in September?
A. No.
Q. 542. None of it?
A. Not a bale, in my opinion, or according to my information.
Q. 543. Neither the Thomasville nor the Florida cotton?
A. No.
Q. 544. Didn't you try to move some of it in September, and were stopped?
A. No, sir.
Q. 545. Didn't you take steps to move it in September?
A. I went there for the purpose, and carried with me the order of General Steadman, giving me permission to remove it.
Q. 546. That is the time you went there and did what you already testified?
A. Yes.

Q. 547. Did you ever talk with the defendant in this suit about his personal liability for the cotton you are claiming in this suit?

A. No.

Q. 548. Did you ever tell him that you would sue him individually?

A. No.

Q. 549. Before bringing this suit did you ever make any
131 demand upon him for this cotton or its proceeds, other than the interviews you had with him which you have testified to already?

A. I did not.

Q. 550. By the claim, which you now apparently make in answer to questions 109, 155, and 156, and others, you claim in this suit for 630 bales, and another lot of 633 bales of cotton, making in all 1,263 bales; is that the total number of bales for which in fact you claim in this suit?

A. It is.

Q. 551. Is not your claim for a less number of bales than that according to your testimony?

A. No, sir; it had been made for a less number previously.

Q. 552. When?

A. At different times; but when I got possession of this copy of the cotton book I then discovered the omission.

Q. 553. You had possession of that, had you not, before this suit was commenced?

A. Yes.

Q. 554. You knew as well when this suit was commenced how many bales you were entitled to claim for, if any, as you do now?

A. I did not.

Q. 555. Why not?

A. Because I had not examined the book particularly.

Q. 556. Did you not know as well when you commenced to give your deposition in this suit before this commissioner what your claim was in number of bales as you do now?

A. No.

Q. 557. Why not?

A. Because I discovered the omission on an analysis of the book.

Q. 558 Since you have been under examination?

A. Since the commencement of the examination.

Q. 559. Then, as I understand you, you mean to testify that your claim has grown from 1,084 bales, the total number of bales named by you in your testimony when first examined in answer to question 37, to 1,263 bales now claimed?

132 A. It has grown by the error being corrected.

Q. 560. Did you ever sell any cotton in the fall of 1865?

A. Not personally.

Q. 561. Or in the fall of 1866?

A. No, sir.

Q. 562. Were you present at any sales of cotton in the fall of 1865 or in the fall of 1866?

A. I don't recollect of any. I had some cotton sold in the fall of 1865 by a commission merchant.

Q. 563. You have no means within your personal knowledge of testifying as to the market value of cotton in New York in 1866, have you?

A. No.

Q. 564. Or in Savannah?

A. No.

Q. 565. Nor of the expense of getting cotton from Georgia to New York?

A. In what year?

Q. 566. 1866.

A. No, I don't recollect particularly; they were much less in 1866 than they were in 1865.

Q. 567. Was the arrangement that you testified about yesterday, under which you withdrew your claim in the suit in the Court of Claims, for the cotton that you are claiming in this suit, made after the decision of the Court of Claims or before?

A. I understood it was made before.

Q. 568. Was it not made after the testimony in that suit was closed, and just prior to this hearing?

A. I think not; I don't know; I only got my information from my attorney, Mr. Peck.

Q. 569. What is Mr. Peck's first name?

A. Charles F.

Q. 570. Did he tell you that arrangement was made with him?

A. Yes, sir.

Q. 571. Personally?

A. He said he had agreed with the assistant district attorney.

Q. 572. You mean the Assistant Attorney General?

A. The attorney representing the United States.

133 Q. 573. Was there a special counsel in the case for the United States?

A. I cannot say.

Q. 574. Were you present at the hearing in the Court of Claims?

A. I was not.

Q. 575. How much money did you receive for your claim in that suit, or how much was awarded you?

A. $579,342.

Q. 576. Covering a total of how many bales?

A. 3,275, I think.

Q. 577. Did that include any Savannah cotton.

A. That was all Savannah cotton.

Q. 578. As you understand it, that was all for Savannah cotton?

A. Yes.

Q. 579. Was not that arrangement that you speak of made after the suit had been heard in the Court of Claims, and before it was decided?

A. I think not. I think Mr. Peck told me that the reason why he made that arrangement was that the attorney said that he would not try the case at that term of the court if those two lots of cotton

were in, because he had taken no testimony in regard to them, and in order to get to trial he consented to withdraw them from the proceedings.

Q. 580. How long after the hearing and the decision?

A. I don't know; I was not present.

Q. 581. Was this suit against Mr. [Mc]Culloch brought before that decision?

A. No, sir.

Q. 582. Was it brought before the money was paid under it?

A. It was.

Q. 583. Do you know of any other matter or thing which would tend to the advantage of the defendant in this case? If so, state the same as fully as though specially interrogated thereto.

A. I don't know of anything whatever that could justify his conduct.

134 Redirect:

Q. 584. You have been asked on your cross-examination where you resided (in 1861), and have answered in New York, and that you went from New York to Savannah; where did you reside before you came to New York?

A. I resided in the city of Savannah.

Q. 585. Of what State are you a native?

A. The State of Georgia.

Q. 586. Where were your relatives residing in 1861?

A. Principally in Georgia.

(All the foregoing redirect testimony objected to by defendant's counsel, as not properly in rebuttal.)

Q. 587. How long had you been residing in New York before 1861?

A. About twelve years.

Q. 588. In your answer to the sixtieth interrogatory you have stated "the rest of the cotton that you now claim for except the 52 and 56 bales you have named was in the warehouse of Evans & Parnell," to what cotton did you allude when you said "the rest of the cotton"?

A. To the Florida cotton.

Q. 589. The question is asked you "did you see any more" then, "all the rest of the cotton that you now claim except the 52 and 56 bales you have named which you say were at Evans & Parnell's warehouse," then you answered that the rest of the cotton was at Evans & Parnell's warehouse at Thomasville. Now did you mean that all the rest of the cotton except these 52 and 56 bales, for which you are suing, were at Evans & Parnell's, or did you mean the rest of the cotton called the Thomasville cotton that you are suing for?

A. I meant the rest of the cotton called the Thomasville cotton.

Q. 590. That is what you meant by the "rest of the cotton"?

A. Yes.

Q. 591. In answer to question 154 you have said that whenever

you spoke of the agent of Mr. McCulloch you meant one
135 Brown, Jr., or Beard; to what portion of the country did you allude in speaking of that agency?

A. To Thomasville.

Q. 592. Was there or was there not another agent of Mr. McCulloch's in Florida?

(Objected to.)

A. There was.

Q. 593. Who was that?

(Objected to.)

A. Samuel G. Cabell.

Q. 594. In answer to cross-interrogatory 171 you have spoken of a circular or letter in the hands of Colonel Kimball, giving him certain directions in relation to this cotton; did Colonel Kimball, who held that circular, say what he intended to under the instructions therein contained?

A. He said that he meant to deliver all the company's cotton to Beard and mine to me or to my agent, under the permit to me of General Steadman.

Q. 595. You have, in answer to the 182d interrogatory, spoken of your efforts to get your books; can you state more particularly than you then answered as to what occurred in your efforts to get those books?

(Objected to.)

A. I applied frequently, using the influence of different friends on different occasions to Mr. McCulloch for the return of my books and papers; among the rest, Attorney General Stansbury, Judge Black, Baron de Zeng, Colonel Florence, and, perhaps, others whom I don't remember now, and he refused to give them up.

Q. 596. You have speken in your examination of your having been imprisoned; have you any facts within your knowledge to show that that imprisonment was procured directly or indirectly by the defendant in this case?

(Objected to.)

136 A. I have; when the court by which I was to be tried was about to be assembled, I wrote to Mr. McCulloch and asked him to give me a letter stating the facts and the promises and assurances he had made to me when I saw him about the first of September, 1865, relative to his action on this cotton—

(Defendant's counsel objects to the witness stating the contents of that letter unless it is produced.)

—and that his agents were not authorized to, and would not molest it, he replied to my letter and without denying—

(Same objection by defendant's counsel.)

—the fact he refused to give the letter; if he had given me that

letter it would have justified me in my opinion, before any tribunal of justice so called except a military commission.

(Defendant's counsel calls upon the plaintiff to produce that letter of the defendant.)

Q. 597. Where is that letter that you received from Mr. McCulloch?

A. I don't know.

Q. 598. Have you it in your possession?

A. No, sir.

Q. 599. Are you enabled to get possession of it?

A. Not at present, in any way that I know.

Q. 600. You have spoken of the difference in the number of bales that were in your suit, as testified in your first examination and subsequenty increased by your testimony. What called your attention to a particular and closer examination of the book which enabled you to make that correction?

A. By referring to the book itself, which stated where the cotton was, part of it in Thomasville and part on plantations in Florida.

137 Q. 601. Why did you refer to that book, particularly since this examination was begun?

A. Because it furnished me with the testimony and the particular facts in regard to the cotton.

Recross:

Q. 602. Had you not examined that in connection with your other claims and litigations about cotton?

A. I had examined it in regard to the Savannah cotton, in regard to the cotton taken at Savannah.

Q. 603. Hadn't you examined it in regard to the Thomasville and Florida cotton?

A. I had not thoroughly.

Q. 604. When this suit was brought you made some examination, did you not, to enable you to fix your claim?

A. Not by the book.

Q. 605. Did you not have that book then in your custody?

A. Yes; but I didn't examine the book particularly.

Q. 606. On what did you base your claim for damages in bringing this suit; what number of bales?

A. I based it upon the records in that book.

Q. 607. Then you are naming more bales in your testimony, and claiming for them, than were named originally when you brought this suit?

A. I am.

Q. 608. And you are estimating your claim for damages at so much per bale, are you?

A. Yes.

Q. 609. As to that letter of Mr. McCulloch which you have spoken of, did you ever apply to the Department for a copy of it?

A. No, sir.

Q. 610. What did you do with your original?

A. I don't recollect what I did with it.

Q. 611. Do you make any claim in this suit for damages for withholding or converting your books and papers?

A. No, sir.

Q. 612. Do you make any claim at all against the defendant in this suit in that connection?

138 A. I do not; not for damages, except to his character.

Q. 613. Why do you volunteer testimony on that subject?

A. To show Mr. McCulloch's unjust action towards me.

Q. 614. You mean to show upon the record your prejudices in that connection?

A. Not any prejudice at all, except upon a just foundation.

Q. 615. Then you mean to show upon the record your opinions in that connection?

A. I do, and would like to give them more at large.

Adjourned to Thursday, July 2d, at 11 a. m., for the purpose of closing the testimony.

JULY 2D.

Met pursuant to adjournment.

Present: Parties.

Mr. LAMAR continues on recross-examination:

Q. 616. Did Mr. McCulloch, in your presence or within your knowledge, ever give any order concerning the particular cotton that you are claiming for in this suit especially?

A. He did.

Q. 617. Was that verbal or in writing?

A. It was a verbal order to Mr. Kaufmann given in my presence at the interview spoken of in September, 1865.

Q. 618. Is that the only order you know of his having given in respect to cotton claimed by you of him?

A. It is the only one I know of.

Q. 619. State the language of that order to the best of your recollection.

A. He told Mr. Kaufmann to make a telegram to Mr. Brown at Thomasville to replace the cotton he had taken from M. McKinlon & Co.'s warehouse, and to report to him at Washington.

139 Q. 620. Did you ever see any such telegram or letter?

A. No, sir.

Q. 621. State who was present when that order was given.

A. Mr. McCulloch, Mr. Kaufman, myself, and perhaps some other officers of the Department whom I did not know, and don't recollect.

Q. 622. How many others?

A. I did not count them, or take any particular notice of them.

Q. 623. Were there more than two?

A. I can't say.

Q. 624. Was there no other than this particular interview in September, 1865?

A. I think not; the circular letter to which I have referred is marked "B," on page 148 of the printed pamphlet.

GAZAWAY B. LAMAR.

(Cross-examination closed.)

Subscribed and sworn to before me, July 2, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

I certify that the foregoing is a correct copy of the original testimony of Gazaway B. Lamar this day filed in the clerk's office of the U. S. circuit court.

N. Y., July —, 1874.

EDWARD L. OWEN,
U. S. Commissioner.

140 *List of G. B. Lamar's Cotton at Thomasville and in Florida.*

Marks.	Bales.	Weights.	Remarks.
R	63	29,308	Bought by Rust & Meagher, and sent to Thomasville (20 bales out).
W R S	20	9,962	
D E M	17	9,163	
C	23	11,058	
T C	20	10,552	
M T	143	76,505	Bought of F. H.
B T B	66	35,629	Cotton in Thomasville.
C S E	36	19,080	Cotton book, p. 22.
B C	65	30,680	Of B. Chaires, p. 9.
G A C	106	52,470	Of G. A. Chaires, p. 7.
J J W	77	38,280	Of J. J. Walker, p. 2.
B W B	8	4,184	Of B. W. Bellamy, p. 17.
W T	14	7,000	P. 73.
Bales	658		In Thomasville.
Less	20		
	638		
			Bought of F. H. Cotten—
B T B	154	77,000	On his plantation.
C S E	98	49,000	In Florida, C. B., p. 22.
W	91	45,461	Of G. Whitfield, p. 22.
B W B	56	28,000	Of B. W. Bellamy, p. 17.
G	25	12,500	Of Mr. Gamble, p. 19.

Marks.	Bales.	Weights.	Remarks.
Est. J W C	150	77,617	Of F. H. C., on his plantation, 22.
R G	24	12,000	Of Gamble, p. 58.
Ⓟ	23	12,154	Of Parkhill, p. 58.
L	12	6,262	Of G. A. Croom, in the seed, packed by order of Cabel, Tr. agent in Florida.
Bales -----	633		

Exa.: E. L. O., June 29th, 1874.
June 28, 1874. G. B. LAMAR.

141 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1879, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is ancient and infirm.

I further certify that notifications of the time and place of taking the said deposition were given in writing by plaintiff's attorneys and by myself to the defendant's attorneys to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, as appears from said notice with admission of service hereto annexed; and that on the 6th, 9th, 13th, 16th, 18th, 22d, 29th, and 30th days of June, and 1st and 2d days of July, in the year of our Lord one thousand eight hundred and seventy-four, I was attended by the attorneys for the respective parties and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by myself and the stenographer reduced to writing in the presence of the witness, and from his statements, and after the same had been carefully read to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court, for which the same was taken.

And I do further certify that I am not of counsel nor attor-
142 ney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this 2d day of July, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

[SEAL.] EDWARD L. OWEN,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Endorsed:) U. S. circuit court, southern district of New York. Gazaway B. Lamar ag'st Hugh McCulloch. Deposition of Gazaway B. Lamar, taken before me, Edward L. Owen, U. S. commissioner. Filed July 7, 1874.

143 United States Circuit Court, Southern District of New York.

G. DE ROSSET LAMAR, Executor of Gazzaway B. Lamar,

vs.

HUGH MCCULLOCH.

Deposition of JOHN P. COLES, taken *de bene esse* before John A. Shields, Esq., U. S. commissioner, at the office of George Ticknor Curtis, attorney for plaintiff, 140 Nassau street, New York city, Thursday, January 17, 1884.

Appearances: George Ticknor Curtis, Esq., for plaintiff; L. Karge, Esq., (assistant U. S. district attorney), for defendant.

It is consented by and between the attorneys for the respective parties that this deposition be taken by a stenographer; that his stenographic notes be reduced to writing and read over to the witness, and signed after being written out.

144 JOHN P. COLES, being duly sworn and examined as a witness on behalf of the plaintiff, deposes and says:

By Mr. CURTIS:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John P. Coles; age, sixty-four; residence, Tallahassee, Florida; occupation, cotton warehouse business.

Q. 2. How long have you followed that business?

A. I have followed it since 1854.

Q. 3. Has your business from that time to the present comprehended the weighing of cotton for the owners of it?

A. It has.

Q. 4. Is or not the business of a cotton weigher in your State an official business, or is it like any other private employment?

A. Well, before the war it was an official business; each cotton weigher was licensed by the Governor, at least received his appoint-

ment from the Governor; but since the war it hasn't been so—that is, when I say since the war, I mean since 1865; every man can start his own cotton warehouse and get all the custom he can; that is the rule now, but before the war we were obliged to be appointed by the Governor; each county appointed so many weighers for the county; by the new arrangement we have nothing of the kind.

Q. 5. How was it during the war in this respect?

A. Well, everybody had his man to attend to his own cotton—mark it and ship it; at least it was weighed, not shipped, because you couldn't ship much except by blockade runners; but we weighed and marked the cotton and had it stored in different warehouses, and where we thought the city was liable to be attacked by the enemy then we moved it in the interior.

Q. 6. You now speak of the practice where the cotton was weighed by the warehouseman; did or did not the same person weigh cotton on plantations for the owners?

A. Yes, sir; I did weigh it on plantations and also at the warehouse; during the war most of the cotton was weighed on the plantations.

Q. 7. Were you acquainted with the late Gazzaway B. Lamar?

A. I was.

Q. 8. Were you acquainted with G. W. Cabell?

A. Yes, sir; I was acquainted with him.

145 Q. 9. During the period when Southern ports were blockaded by the navy of the United States, did you know Mr. Cabell?

A. I did.

Q. 10. Do you know in what business he was then engaged, and, if you say you do know, state how you know it?

A. Well, I knew him when he was living there before the war; he was what we called a blockade runner; I knew him there, I think it was as late as 1864, and after that I never saw him there until 1865; then he came as United States agent.

Q. 11. That calls for a further answer as to how you know that he was a blockade runner?

A. I got it from his own mouth; he told me himself.

(Objected to.)

Q. 12. Did he, or not, state to you, or in your presence, what goods he was engaged in running in or running out of the blockade?

(Objected to, as immaterial.)

A. No; I never heard him say anything on that subject.

Q. 13. After the surrender of General Lee in 1865, did you meet Mr. Cabell anywhere; and, if so, where, and in what capacity did he then claim to be acting?

(Objected to.)

A. After the war I met Mr. Cabell in Tallahasse; he claimed to be a Treasury agent.

Q. 14. Did he, or not, say to you, or in your presence, that he was an agent for the United States Treasury?

(Objected to.)

A. No; he never stated that to me.

Q. 15. You state that he claimed to be a Treasury agent; how did he claim it?

146 A. Well, he claimed it on the principle of taking all the cotton he could get; he never told me he was a United States agent.

(Objected to by counsel for the defendant, and move to strike out the answer as not responsive to the question.)

Q. 16. (Handing witness letter.) Look at the letter now shown you, marked by the commissioner Plaintiff's Exhibit 1, deposition of John P. Coles, and state if you know in whose handwriting it is?

A. That is my handwriting, sir.

Q. 17. Are the whole contents of that paper, including the memorandum written at the top, in your handwriting?

A. Yes, sir.

Q. 18. To whom was this letter addressed?

A. G. B. Lamar.

Q. 19. It bears date on the 15th of February, 1866; did you, or not, mail it to Mr. Lamar at or about that time?

A. I did.

Q. 20. Are you acquainted with the handwriting of G. B. Lamar?

A. I am; it is some time since I have seen his letters; I have got a number of his letters at home, but I have none with me; I am very well acquainted with his handwriting; I think if I could see his handwriting I would know it.

Q. 21. Look at the endorsement of filing on the back of this letter, Plaintiff's Exhibit 1, and state if you know in whose handwriting it is.

A. Well, sir, to the best of my knowledge, I think that is Mr. Lamar's handwriting.

Q. 22. Prior to the time when this letter of February 15th, 1866, was written by you to Mr. Lamar, were you or not employed by him to weigh certain cotton on plantations in the neighborhood of Tallahassee?

(Objected to, as immaterial.)

A. I was his agent there and attended to his cotton, and I weighed cotton for him at Tallahassee.

(Objected to, as not responsive to the question.)

147 (Question repeated.)

A. I was.

Q. 23. Refreshing your recollection by the letter of February 15, 1866, and the memoranda in your handwriting at the top of it, state

whether or not you weighed at the plantation of G. A. Croom twelve bales of cotton marked L.?

(Objected to.)

A. That cotton was brought from the plantation to Tallahassee, and weighed and marked there.

Q. 24. Did you or not weigh on the plantation of B. W. Bellamy fifty-six bales of cotton, and mark it B. W. B.?

(Objected to.)

A. No, sir; I didn't mark or weigh that.

Q. 25. Who did weigh it, if you know?

(Objection.)

A. G. W. Cabell had it seized, taken from the plantation, and carried down to the depot, which is Station No. 4 on the Pensacola & Georgia railroad, and had it marked and shipped.

Q. 26. What is the third name on the list?

A. That is George W. Whitfield, ninety-one bales, marked W.

Q. 27. Did you or not weigh that cotton?

A. No, sir.

Q. 28. The fourth item in the memorandum is R. Gamble, twenty-four bales, marked R. G.; did you weigh that cotton?

A. No.

Q. 29. The fifth item is estate of G. W. Parkhill, twenty-five bales, marked O; did you weigh that cotton?

A. No, sir.

Q. 30. The next item is Mrs. Wm. Bailey, Sr., twenty-five bales, marked G; did you weigh that cotton?

A. I did.

Q. 31. Where did you weigh it?

A. On the plantation.

Q. 32. On whose plantation?

148 A. On Mrs. Wm Bailey's, Senior, plantation.

Q. 33. The last item is F. R. Cotten, ninety-seven bales, marked $\frac{B—T}{B}$; did you weigh that?

A. No, sir.

Q. 34. What does the last number of ninety-eight bales, marked $\frac{C—S,}{I}$ refer to?

A. It belonged to the same lot; it belonged to F. R. Cotten; both lots belonged to him.

Q. 35. There were two Cotten lots—ninety-seven bales and ninety-eight bales?

A. Yes, sir.

Q. 36. These eight lots foot up four hundred and twenty-six bales; in whose handwriting, if you know, are the figures in pencil under the written figures 426, 91, and then the sum, after deducting 91, 335 bales?

A. Well, I should take that to be G. B. Lamar's handwriting, from the figures and the letters there.

Q. 37. They were not on the letter when you mailed it?

A. No, sir; I never saw them before until yesterday.

Q. 38. In your letter to Mr. Lamar you say: "Above you have a list and marks of cotton seized by Mr. S. W. Cabell, as the United States Treasury agent for this portion of the State;" are those initials a mistake for G. W. Cabell, and is the person to whom you refer in this letter the same Mr. Cabell whom you have previously stated you were acquainted with, and who you say claimed to act as United States Treasury agent?

A. He is.

Q. 39. Is this an error?

A. S. W. Cabell is the same man; that is the only one I know of; that is his name, to the best of my knowledge; there was only one Treasury agent there in that portion of Florida called Cabell, and S. W. was the name he went by there; I know his name was Cabell; this man I give there is the only man that was in Florida of that name; that is the name he went by in Tallahassee—S. W. Cabell.

Q. 40. State how you did know, at the time you wrote this letter to Mr. Lamar, that Mr. Cabell had seized this cotton?

A. Well, most of those marks that I give there were at Tallahassee; I was down there myself; my warehouse was down there at
149 the depot, as we call it, and there the cotton was taken and loaded; Cabell took charge of it; the other marks were from Monticello; I did not see that.

Q. 41. You are not speaking of any other lots but these?

A. Some of that same cotton was in Monticello; G. A. Croom's was down at the depot; that went off; F. R. Cotten's two lots went off; Mrs. William Bailey's, Senior, lot was sent from the Monticello depot; the lot belonging to the estate of G. W. Parkhill was sent from Monticello depot; R. Gamble's lot was sent from Monticello depot; and G. W. Whitfield's lot, ninety-one bales, was sent from Monticello; the fifty-six bales were sent from station 4 of the Pensacola railroad; Bellamy's plantation was within a mile or two of that place.

Q. 41. How do you know the cotton was sent from Monticello?

A. I knew from the parties where the cotton was stored in Monticello at the plantation and at the warehouse; that is how I came by the fact; I knew that the cotton was in Monticello, because I had seen it there; I traveled around on the different plantations where these lots of cotton were stored at that time; those lots that I speak of—the Whitfield lot and the Gamble lot and the Parkhill lot—were all stored in Monticello; Mrs. William Bailey's, Senior, lot was stored on her plantation, and it was hauled from her plantation to Monticello; this F. R. Cotten lot was stored on his plantation; G. A. Croom's lot was shipped from Tallahassee.

Q. 42. What, if anything, did you see Mr. Cabell do to take o his possession any of these lots of cotton?

A. I was at the depot when the F. R. Cotten lot was delivered

there; also G. W. Croom's; I saw Mr. Cabell there and he ordered it on the train; G. B. Lamar was there also at the same time when the cotton went on the cars and tried to stop it, but Mr. Cabell had it there and ordered it on, and we had no orders to stop it; couldn't stop it; I even went so far as to go to the agent of the railroad to get him, and he wouldn't stop it; Jacksonville was at that time the only shipping point we had in Florida.

Q. 43. What, if anything, occurred there between Mr. Lamar and Mr. Cabell in reference to this cotton? If there was any conversation state what it was.

(Objected to.)

150 A. Mr. Lamar forbid the cotton to be shipped; said it was his cotton, and he said some pretty hot language, too—some plain English—but Mr. Cabell said it was going forward; that is about the amount of the conversation; he said he would send it forward, which he did.

Q. 44. Did, or not, Mr. Cabell state to you, or in your presence, whose cotton those various lots were before he seized it?

(Objected to.)

A. He never said a word.

Q. 45. (*De bene esse*) Did Mr. Cabell at any time, to you or in your presence, claim or pretend that any part of this cotton was what was called Confederate cotton?

(Objected to.)

A. Never.

Q. 46. Did he to you, or in your presence, at any time claim or pretend that this cotton, or any part of it, before it was seized by him, belonged to any importing or exporting trading company?

(Objected to.)

A. Never.

Q. 47. In this letter to Mr. Lamar you speak of going to Jacksonville to ascertain by what vessel one hundred and ninety-six bales of the cotton had been shipped from Jacksonville; did you, or not, go to Jacksonville for that purpose?

(Objected to.)

A. No.

Q. 48. You reported to Mr. Lamar concerning 426 bales of cotton; how, if at all, did you know that the cotton was Mr. Lamar's property?

A. I was acting agent for Mr. Lamar at the time.

(Objected to, as not responsive to the question.)

Q. 49. (Repeated.)

151 A. I knew from the marks and from the cotton itself; I saw the cotton, and knew where it was stored.

Q. 50. Had you or not anything to do with the purchase of the cotton for Mr. Lamar?

(Objected to, as not being sufficiently specific to enable the witness to intelligently answer the question.)

A. No.

Q. 51. Do you know whether Mr. Lamar purchased this cotton, or any of it, by direct dealings with the planters, or whether he made the purchase through an agent?

(Counsel for the defendant objects to the last part of the question.)

A. Mr. Lamar purchased no cotton, but he had an agent; he bought no cotton individually; when I say "bought," I mean in Florida; he had an agent by the name of W. W. Cheever; that agent died in July, 1863, and I was acting under Mr. Cheever, who purchased all this cotton.

(Objected to, as not responsive to the question.)

Q. 52. How do you know that Mr. W. W. Cheever purchased all this cotton for Mr. Lamar?

A. My knowledge in that respect is, he told me so himself.

Q. 53. Who told you?

A. W. W. Cheever.

Q. 54. Were you in any way concerned, or had you personal knowledge of, any of the payments made for the cotton; do you know how it was paid for?

A. I have some knowledge; I know it was purchased in Confederate money.

Q. 55. Are you able to state what this cotton was worth per pound in Florida in February, 1866?

(Objected to.)

A. I am; you will notice on that memorandum some sea island cotton; there was considerable difference in the price of that cotton.

152 Q. 56. I speak now of the cotton described in that memorandum?

A. That is what I allude to; the short cotton was worth from fifty to sixty cents a pound.

Q. 57. Gold or currency?

A. Gold; the long cotton was worth from seventy to eighty cents a pound.

Q. 58. Was that gold or currency?

A. Gold.

Q. 59. Of what quality were the 426 bales mentioned in the memorandum sent by you to Mr. Lamar; I mean was it long staple or short staple?

A. I should consider that cotton was what we class middling cotton.

Q. 60. Was it long staple or short staple?

A. Short staple; the short cotton is what is called upland cotton, and the long cotton is sea island cotton.

Q. 61. Then you mean to say that this cotton was worth between fifty and sixty cents a pound, gold?

A. Yes, sir.

Q. 62. Are you able to state what bales of the whole 426, if any, were sea island cotton or long staple?

A. 414 bales in those lots were short staple; twelve bales, that is, the Croom cotton, were the only long cotton in it.

Q. 63. The Croom cotton was long staple?

A. Long cotton, long staple.

Q. 64. The rest were all short staple?

A. Short cotton.

Q. 65. Did you or not examine the bales?

A. I did examine a great many.

Q. 66. In what condition were they?

A. Good condition, sir.

Adjourned to Friday, January 18th, at 11 o'clock a. m.

FRIDAY, *January* 18, 1884.

Met, pursuant to adjournment.

It is stipulated by and between the respective attorneys that the defendant shall have the right at the close of the deposition,
153 and before it is signed by the witness, to note any objections to questions or answers that he may desire to put upon the record.

Direct examination of JOHN P. COLES resumed:

By Mr. CURTIS:

Q. 67. Please look at what purports to be an original letter written by you to G. B. Lamar, dated Tallahassee, November 30, 1865, and state whether or not it is in your handwriting.

A. This is in my handwriiing.

Q. 68. Is the signature yours?

A. That is mine, sir.

Q. 69. Look at the endorsement on the back of the said original letter and state, if you know, in whose handwriting that endorsement is.

A. That is G. B. Lamar's handwriting.

Q. 70. Please annex to your deposition a copy of the said original letter referred to in the last two interrogatories, the same to be marked by the commissioner Plaintiff's Exhibit 2, Deposition of John P. Coles, and please identify the copy by your signature thereon as the witness.

A. I will hand such a copy to the commissioner and will identify it by my signature.

Q. 71. In this letter you stated to Mr. Lamar as follows: "I had a call from Mr. S. G. Cabell this morning, who informed me that he had an order from the Treasury Department to forward all your cottons in Florida to Mr. S. Draper, New York, and also an order from General Newton." Refreshing your recollection by an examination of the original letter, state wnether or not the statement made by you to Mr. Lamar as to the information given you by Mr. Cabell was true.

A. It was.

Q. 72. Were you, at the time this letter was written, acquainted with General Newton?

A. I was.

Q. 73. In what position was he acting at the time this letter was written?

(Objected to.)

154 A. He was General Commander of the Department at Florida, Middle Florida; his quarters were at Tallahassee.

Q. 74. He was the United States general in command of which department?

A. The Middle Florida Department it was called, sir; Florida was divided into two departments, and his was Middle Florida.

Q. 75. Did you, or not, know him as acting in that capacity?

A. I did.

Q. 76. At the time this letter was written, and at the time of your interview with Mr. Cabell, referred to in this letter, what railroad extended from Tallahassee to Jacksonville?

A. A railroad called the Pensacola and Georgia; P. & G., we call it there.

Q. 77. At that time, in whose possession was the said railroad?

(Objected to.)

A. It was in the Government's; in charge of the Government.

Q. 78. Had you occasion to know or means of knowing that the United States Government, at that time, controlled the said railroad?

(Objected to, on the ground that the suit is not against the Government.)

A. I had.

Q. 79. Was it or not, at that time, permitted by the military authorities of the United States, that any property should go forward on that railroad from Tallahassee to Jacksonville without permission from General Newton?

(Objected to, as immaterial)

A. It couldn't go forward without a permit from General Newton.

Q. 80. What was the order from General Newton which Mr. Cabell informed you he held?

(Objected to.)

155 A. Well, I suppose the order was a permit to allow the cotton to go through, the same as any private citizen had to get a permit.

Q. 81. At the time you had this conversation with Mr. Cabell, did he say anything to you, and what, respecting the cotton which he was forwarding?

(Objected to.)

A. No particular lot, he did not; he said he was shipping cotton, but didn't mention any particular lot at that time.

Q. 82. You state in this letter that you had a call from Mr. Cabell?

A. Yes, sir.

Q. 83. What, if any, reason did he give for calling upon you at that time?

A. One reason was that I was the agent for Lamar—acting as agent for Lamar; the next reason was that I had the charge of the cotton in that department down there at the depot; I was what is considered agent for the warehouse down there, where we received all the cotton.

Q. 84. What did he say to you was the reason he came to you?

A. Well, he came to me in regard to Lamar's cotton, and asked me the question if I was agent, and I told him I was.

Q. 85. At the time you had this conversation with Mr. Cabell, where was the Lamar cotton about which he spoke to you?

A. Well, it was distributed around the different parts of the county on the different plantations.

Q. 86. When the different lots of this cotton had been brought into Tallahassee, was it brought to the depot of the railroad?

A. When I say the different lots I mean the two lots—that is, the Croom lot and the Cotten lot; they were brought to the depot; those other lots were in Monticello, Jefferson county; they were taken from the depot there; they wouldn't haul them from Jefferson county, a distance of thirty-five miles, down to Tallahassee; they were shipped from the depot there.

Q. 87. That is the depot at Monticello?

A. At Monticello; yes, sir.

156 Q. 88. Did you see any of the cotton at Monticello?

A. I saw it before it was shipped.

Q. 89. At Monticello?

A. At Monticello.

Q. 90. When you say "shipped" you mean put on board railroad cars?

A. Put on board cars; that is what we called shipped.

Q. 91. Did you there examine it or not?

A. I examined the condition of the cotton and saw the marks in the store where it was stored.

Q. 92. How did the marks correspond with those which you gave to Mr. Lamar in the memorandum written at the top of your letter of February 15, 1866?

A. They correspond with those in that paper.

Q. 93. They were the same marks?

A. The same marks.

Q. 94. Did you see the Croom cotton and the Cotten cotton at the depot in Tallahassee?

A. I did.

Q. 95. Did you examine those lots?

A. I examined the Croom lot; I didn't examine the Cotten lot,

but I saw it when it was hauled down to the depot, when it was shipped; I was there at the time it was shipped.

Q. 96. Did you notice the marks on the Croom cotton?

A. I did; I marked it myself—weighed it and marked it.

Q. 97. How did the marks correspond with those which you gave to Mr. Lamar in the memorandum above spoken of?

A. The same; they correspond with the memorandum.

Q. 98. How did the marks on the Cotten cotton correspond?

A. Well, they corresponded with the original marks first put on.

Q. 99. Those marked on the cotton you did not put on yourself?

A. No; I did not put them on; the party who sold the cotton put them on.

Q. 100. Had you, previous to this, had anything to do with repacking any of this cotton on the plantations?

A. No, sir; I had nothing to do with it.

Q. 101. Was any of it repacked either at Monticello or Tallahassee?

157 A. I don't think there was any of the Monticello lot repacked; a few bales of F. R. Cotten's cotton were repacked.

Q. 102. By whom was it done?

A. That was done through the order of Cabell.

Q. 103. Did you see Mr. Cabell at any time after the cotton was sent forward to Jacksonville?

A. I never saw Mr. Cabell after July, 1866; I came North and never saw him.

Q. 104. After the 30th of November, 1865, did you at any time see Mr. Cabell?

A. Often.

Q. 105. Where?

A. In Tallahassee.

Q. 106. Did you have any conversation with him about this Lamar cotton?

A. Never; any more than what I have said.

Adjourned to Tuesday, January 22, at 11 a. m.

NEW YORK, *January* 22, 1884.

Adjourned to Wednesday, January 23, 1884, at 11 a. m.

NEW YORK, *January* 23, 1884.

Met pursuant to adjournment.

Counsel present as before.

Direct examination of JOHN P. COLES resumed.

By Mr. CURTIS:

Q. 107. Where was G. W. Croom's plantation?

A. Three miles from Tallahassee.

Q. 108. Where was B. W. Bellamy's plantation?

A. In Jefferson county, Florida; I think it was about twelve or thirteen miles from Monticello, which is in Jefferson county.

158 Q. 109. Where was G. W. Whitfield's plantation?

A. That was in Jefferson county, at a place called Waukena Settlement. I should think that was very near the same distance from Monticello as Bellamy's plantation.

Q. 110. Where was R. Gamble's plantation?

A. He was in the same situation as Whitfield's plantation; I think it was the adjoining plantation.

Q. 111. Where was the plantation that belonged to the estate of G. W. Parkhill?

A. That was in Leon county, about twelve miles from Tallahassee.

Q. 112. Where was Mrs. William Bailey, Senior's, plantation?

A. I wouldn't be certain about that, but I should think it must have been ten or twelve miles from Monticello, in the same county, Jefferson county.

Q. 113. Where was F. R. Cotten's plantation?

A. F. R. Cotten's plantation was in Leon county, what is called Lake Imonia; I think it is called fourteen or fifteen miles from Tallahassee, in Leon county.

Q. 114. Were you or not personally acquainted with all these plantations of which you have now been inquired?

A. I was.

Q. 115. You have been on them all?

A. I think I can say I have been on them all, sir.

Q. 116. From what source did you obtain the figures, that is, the number of bales of each of the lots of cotton which you gave to Mr. Lamar in the memorandum written at the top of your letter to him on February 15, 1866?

A. That lot of cotton I saw myself at the depot, and the Croom lot and the other lots I got from the parties where the cotton was stored.

Q. 117. Had you or not seen any papers from which you transcribed these number of bales of the different lots?

A. I had.

Q. 118. What were those papers?

A. Those papers gave the names of the party—the purchasers, the owners of the cotton, the marks and number of each lot, and the number of bales of each lot purchased by these parties.

Q. 119. The question is, what were the papers?

159 A. The papers that I had, sir, were a copy of all the cotton that belonged to Lamar, given to me by Cheever; I had those papers with me when I came here to the city, and last Tuesday I was coming down town, and when I got down to Twenty-third street they were missing; I have not seen them since; whether they were taken out of my pocket I cannot say, but I visited two or three of my nieces that morning; perhaps they dropped out of my coat-tail.

Q. 120. What search have you made for them other than what you have described, if any?

A. I have done nothing besides inquiring of my nieces, unless I

have mentioned it to my nephew; I think my name was on the envelope.

Q. 121. Have you reason to believe, and do you believe, that they were lost?

A. I am certain of it.

Q. 122. In 1865 was there not a branch railroad from Monticello to the Pensacola and Georgia railroad?

A. There was.

Q. 123. What is the distance from Monticello to the junction with the Pensacola and Georgia railroad?

A. I think it was five miles, sir; I think it was called five miles.

Q. 124. You stated heretofore that you saw two of the lots of cotton at the depot at Monticello.

A. I saw two of the lots at the Tallahassee depot; that is, the Croom and cotton lots; the other lots I saw before they were shipped in Monticello.

Q. 125. In Monticello?

A. Monticello; when I say those lots I mean the three different lots—the Whitfield, the Gamble, and Mrs. Bailey's cotton.

Q. 126. When you say you saw the lots at Monticello, do you mean in the town of Monticello or at the Monticello Junction?

A. No, sir; they were in the town of Monticello.

Q. 127. At the depot?

A. No, sir; they were there at the house of Denham & Palmer, the ordinary warehouse.

Q. 128. Did you see them laden on board the cars?

A. No, sir.

160 Q. 129. What is the distance from Tallahassee to the Monticello Junction?

A. It is called thirty miles, sir.

Q. 130. What is the distance from Tallahassee to Jacksonville?

A. It is called 166 miles.

Q. 131. Are the railroads in that quarter now the same that they were in their relative positions?

A. No, sir; they have changed the names, but the railroads are in the same position.

Q. 132. The names are changed, but the railroads are in the same position?

A. The same position exactly.

Q. 133. How much examination did you make of the cotton that you saw at Monticello belonging to Mr. Lamar?

A. Well, sir, I was sent up there to weigh some cotton; Mrs. William Bailey, Sr., was one of them, and several other parties; and while I was there I went around to Denham & Palmer's, and saw the lots there—Mrs. Bailey's, the Campbell lot, the Whitfield lot, and the Parkhill lot (witness refers to the letter of Feb. 15, 1866).

Q. 134. (Repeated.) You have stated what you saw; now I ask you for a specific answer: How much of an examination did you make of those specific lots?

A. Well, sir, I saw the lot of Gamble, as I stated there; Parkhill and Mrs. Bailey, Sr.'s, was on her plantation; I saw that, because I

weighed it myself; these other lots the parties who had been there told me they were there; that is, the Whitfield lot, the Gamble lot, and the Parkhill lot; they were in the same warehouse; this Mrs. Bailey's lot was on the plantation.

Q. 135. Now, you have stated what you saw; the question calls for an answer as to how much of an examination you made of those lots?

A. Well, I walked through the warehouse and saw the cotton; I suppose, from the inventory that I had, or a copy of the different lots, that there was that amount in those warehouses.

Q. 136. Had you with you at the time an inventory?

A. An inventory of every mark and bale of cotton; that is, the one that I just speak of—the copy that I have lost.

161 Q. 137. And did you compare that inventory with the bales that you saw?

A. I did; I didn't count every bale; the gentleman who had charge of the cotton told me it was there.

Q. 138. No matter what he told you; I want to know what you did and saw?

A. No; I didn't count it.

Q. 139. You compared the marks?

A. I compared the marks.

Q. 140. (Handing witness paper.) Just see if that is a copy of the original letter.

A. Yes, sir.

Witness produces and annexes to the deposition a copy of his letter of November 30, 1865, referred to in his answer to the 70th direct-interrogatory, and it is annexed to the deposition, and marked Plaintiff's Exhibit 2, Deposition of John P. Coles.

The letter, as evidence, is objected to on the ground that it is incompetent, irrelevant, and immaterial, and as a transaction to which the defendant was not a party.

Q. 141. Please look at the 23 papers now shown you, purporting to be drafts and check, and state which, if any, of the signatures thereon you know to be the signatures of the parties respectively.

A. I know each of the signatures on these papers purporting to be the signature of G. B. Lamar to be his genuine handwriting; I make the same statement in respect to the signatures purporting to be those of W. W. Cheever; my own signature is on some of the papers, and I placed it there where it stands; I know the signature of David C. Wilson on the sight draft, dated October 22, 1862, marked in red ink No. 304, W. G. C.; I know the signature of A. Hopkins on the draft drawn by William W. Cheever on G. B. Lamar, bearing date Nov. 21st, 1862, marked in red ink "No. 317, W. G. C.;" I know the signature of Thomas J. Perkins on the sight draft, dated 24th of March, 1863, drawn by W. W. Cheever, agent of G. B. Lamar; that is marked in red ink "No. 329, W. G. C.;" I

162 know the signature of William R. Pettes, cashier, endorsed on the 60 days' draft, dated Dec. 6, 1862, drawn by W. W. Cheever

on G. B. Lamar, marked in red ink "No. 315, W. G. C.;" I know the signature of George A. Croom on the back of the sight draft, dated Jan. 10, 1863, drawn by W. W. Cheever and G. B. Lamar for $6,500, marked in red ink No. 321, W. G. C.; I know the signature of J. H. Bull, agent, on the back of the draft, dated Nov. 21st, 1862, drawn by William W. Cheever, at 60 days, on G. B. Lamar, marked in red ink "No. 311, W. G. C.;" I know the signatures of John Milton and C. A. Austin on the back of the sight draft, dated March 4, 1863, drawn by W. W. Cheever on G. B. Lamar, and marked in red ink "34."

Q. 142. Look at the paper now shown you, purporting to be in the following words:

Mr. Clark objects to the counsel reading the contents of the paper.

Mr. Curtis (continuing): "Tallahasse, March 17, 1864; G. B. Lamar, Esq., to Thomas W. Rice, debtor; 27 bales cotton, weighing 13,824 pounds, at 3, $414.72; received payment of J. P. Coles, Thomas W. Rice; Marks, 224 B. C., B. T. B., estate of J. W. Cotton;" state if you know in whose handwriting any part of this paper is, and whether or not you paid to Mr. Rice, for Mr. Lamar, this bill, and what the service was that was rendered by Mr. Rice.

A. The service by Rice was hauling the cotton, 27 bales.

Q. 143. What cotton?

A. It was cotton belonging to G. B. Lamar, and the cotton was purchased of Frederick R. Cotten, through his agent, Thomas J. Perkins.

Q. 144. Look at the bill now shown you, reading as follows:

(Objected to on the same ground.)

Mr. Curtis (continuing): "Tallahassee, Dec. 26, 1863; G. B. Lamar, Esq., to Thomas W. Rice, Dr.; To hauling 26 bales of cotton, weighing 13,364 pounds, at 2, $267.28; received payment of John P. Coles, agent, Thomas W. Rice;" state whether, or not, you paid that bill to Mr. Rice, and what was the service which he rendered—what cotton did it relate to?

A. He hauled the 26 bales, and I paid him the money for hauling it as agent for G. B. Lamar.

163 Q. 145. What was the 26 bales?

A. I can't say what plantation it came off of, but Mr. Rice hauled the cotton and I paid him for hauling it.

Q. 146. You can't identify the cotton?

A. I can't identify the cotton, sir.

Q. 147. Look at the bill (reading):

(Same objection.)

Mr. Curtis (continuing): "Tallahassee, Dec. 16, 1863; G. B. Lamar to George W. Green, Dr.; Repacking 8 bales of cotton, at $10, $80; received payment of J. P. Coles, agent, G. W. Green;" state whether or not this is an original bill, and whether you, as agent for Mr. Lamar, paid it to Mr. Green.

A. This is an original bill; I paid it, as agent of G. B. Lamar.

Adjourned to Monday, Jan. 28, 1884, at 11 a. m.

NEW YORK, *Jan.* 28, 1884.

Met, pursuant to adjournment.
Counsel present, as before.

Direct-examination of JOHN P. COLES resumed:

By Mr. CURTIS:

Q. 148. Was the Mrs. William Bailey, Senior, of whom you have spoken, a widow in 1865–'66?

A. She was.

Q. 149. Whose widow was she?

A. She was the widow of General William Bailey.

Q. 150. Was she at that time sometimes called Mrs. General Bailey?

A. She was.

Q. 151. Please look at the paper now shown you, furnished to me by the district attorney, purporting to be an original letter addressed by you to G. B. Lamar, dated at Tallahassee, April 7, 1864, with a list of cottons and marks at the top thereof, and state in whose handwriting the letter, memorandum, and signature are, and whether or not you posted the same to Mr. Lamar at or about the time of its date, and in whose handwriting is the filing on the back of the said letter.

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A. I wrote the letter, and posted it to Lamar; the filing on the back is in G. B. Lamar's handwriting.

Q. 152. Please produce and annex to your deposition, to be marked Plaintiff's Exhibit 3, Deposition of John P. Coles, and identify, with your signature as the witness, a copy of the letter referred to in your last answer.

A. I will produce and identify the copy.

Q. 153. Look at the paper now shown you, furnished to me by the district attorney, purporting to be an original letter addressed by you to G. B. Lamar, dated Tallahassee, September 30, 1864, with a memorandum on the top of the paper, and state in whose handwriting the memorandum, letter, and signature are, and in whose handwriting the filing is on the back of the said letter.

A. Mr. Lamar's endorsement on the back of the letter is his handwriting; the letter and signature are in my handwriting.

Q. 154. Please produce and annex to your deposition a copy of the said original letter, and identify the same by your signature as the witness, to be marked Plaintiff's Exhibit 4, Deposition of John P. Coles.

A. I will produce and annex a copy before my deposition is signed.

Q. 155. In the letter of April 7, 1864, you speak of Confederate taxes paid on some of Mr. Lamar's cotton; state, if you know, by whom or through whom, those taxes were paid.

A. To the best of my recollection they were paid by me.

Q. 156. For whom and on whose account did you pay them?

A. They were paid for Lamar.

Q. 157. Were you or were you not supplied by Mr. Lamar with the funds to pay those taxes?

A. I was.

Q. 158. Who, if you know, was the executor of the estate of G. W. Parkhill?

A. To the best of my knowledge it was a man by the name of S. Simkins, living in Monticello, Florida.

165 Q. 159. At the time when you wrote to Mr. Lamar your letter of February 15, 1866, heretofore testified of, and furnished him with a memorandum written at the top of it, had you seen Mr. Lamar's cotton book, or any book so called?

A. I had not.

Q. 160. Have you ever seen it?

A. I have never seen his cotton book.

Q. 161. Look at the paper now shown you, purporting to be an account current rendered by W. W. Cheever, as agent of G. B. Lamar, marked in red ink No. 305, W. G. C., and state, if you know, whose handwriting are the contents of that paper and the signature.

A. The writing is W. W. Cheever's and the signature is W. W. Cheever's.

Q. 162. Please produce and annex to your deposition, to be marked Plaintiff's Exhibit 5, Deposition of John P. Coles, a copy of the said original paper, and identify the copy by your signature as the witness?

A. I will.

Q. 163. Look at the paper now shown you, marked in red ink No. 1370, W. G. C., purporting to be a receipt, signed S. Simkins, and state whether or not you know the signature of S. Simkins on that paper to be genuine.

A. I know the signature.

Q. 164. Look at the sight draft now shown you, purporting to be drawn by S. Simkins on W. W. Cheever, agent, dated Monticello, March 11, 1863, for $6,000, and state whether or not the signature signed to that draft is the signature of S. Simkins.

A. Yes, sir; I know the signature of this S. Simkins, and I also know the signature of the endorser, Denham and Palmer.

Q. 165. Look at the paper now shown you, marked in red ink No. 1384, W. G. C., purporting to be signed by Heir & Coles, cotton warehousemen, and state what it is, if you know, and whose signature it is.

A. That paper contains the weight of each bale of Croom cotton weighed at each time, marked 663; that is Heir & Coles' signature of the firm of Robert Heir and John P. Coles.

166 Cross-examination by Mr. CLARK:

Cross-Q. 166. When did you become Mr. Lamar's agent in Florida?

A. I think it was in the summer of 1863, to the best of my knowledge.

Cross-Q. 167. What were your duties as agent?

A. My duties as agent were to look after the cotton and weigh it.

Cross-Q. 168. What do you mean by look after the cotton; how much is included in that?

A. What I mean by looking after it is this: I visited the different warehouses where the cotton was stored, and it was my business to see that it was in good order, and if it was not, to see that it was put in good order; that was about in 1863; after that I was acting as agent for Mr. Lamar.

Cross-Q. 169. It was not a part of your duty to take possession of the cotton, you left it where it was?

A. Well, I used to go around——

Cross-Q. 170. The cotton was not in pour custody?

A. At the time it was weighed it was.

Cross-Q. 171. I mean any of this that you referred to on your direct examination?

A. I did not consider it my cotton.

Cross-Q. 172. Was it in your possession?

A. Now, for instance, there was a lot sent down to the depot where my warehouse was; I weighed that and had instructions to have it shipped by railroad.

Cross-Q. 173. You have referred on your direct examination to 97 bales of F. R. Cotten cotton; was that in your custody?

A. No, sir.

Cross-Q. 174. You have referred to 98 bales of F. R. Cotten cotton, marked $\frac{C-S}{I}$; was that in your custody?

A. That was not in my custody.

Cross-Q. 175. You have referred to 51 bales marked B. W. B., was that in your custody?

A. That was not in my possession either.

Cross-Q. 176. You have referred to 91 bales marked W., was that in your custody?

A. That was in Monticello.

Cross-Q. 177. But it was not in your custody?

167 A. No.

Cross-Q. 178. You have referred to 23 bales marked Was that in your custody?

A. That was in Monticello; it was not in my possession.

Cross-Q. 179. You have also referred to 25 bales marked G., and 24 marked R. G., and 12 bales G. A. Croom; were any of those bales in your custody?

A. That cotton of G. A. Croom was in my possession at the time; I weighed it and had orders to ship it; in all the cottons that were stored at the different warehouses, I was acting as agent to see the cotton was kept in good order; I went around to the different warehouses; the lot of Croom's was in Tallahassee and the other was in Monticello; I went around there and saw them stored in the warehouses; I took possession of none of these lots; they were at the different warehouses; his object was to have me go around and

weigh those lots that were not weighed and mark them and see that they were stored in a good place.

Cross-Q. 180. Then I understand you, in regard to this cotton, that none of it was taken out of your possession or custody by Cabell?

A. That is a question very easily answered; part of Croom's cotton was taken out of my possession; and the F. R. Cotten lot; they were at the depot, and I saw the agent, as he called himself, take possession of those lots of cotton; but those in Monticello I did not see, nor that of Bellamy's, because it was distant so far.

Cross-Q. 181. You say that you had possession of the F. R. Cotten cotton when it was taken?

A. No; I saw the cotton at the station.

Cross-Q. 182. The question is, Mr. Coles, did you have possession or the custody of any of this cotton?

A. None.

Cross-Q. 183. Did you find these lots of cotton on the plantations and in the warehouses where they were in 1865 when you became Lamar's agent in 1863?

A. Yes, sir; I think those cottons—most of them—were in the warehouses at that time, except these two lots of G. A. Croom and F. R. Cotten.

Cross-Q. 184. Where were they.

168 A. They were delivered at the depot—the G. A. Croom cotton; I weighed at the depot.

Cross-Q. 185. They had been on the plantations.

A. Yes, sir.

Cross-Q. 186. And were brought down for shipment at the time they were seized?

A. Yes, sir.

Cross-Q. 187. Were you bringing them down for shipment?

A. No, sir.

Cross-Q. 188. When they got down to the depot in Tallahassee, they were seized, were they, by Cabell?

A. Yes, sir; I saw him take them.

Cross Q. 189. With your own eyes?

A. Yes; and Mr. Lamar was present.

Cross-Q. 190. Did you count the bales of Croom cotton which he took.

A. I cannot exactly say; it is a long while ago; eighteen years; whether I counted every bale, I won't say.

Cross-Q. 191. You would not be willing to swear positively that he took twelve bales?

A. No, sir; I would not be willing to swear that I counted those bales the time Mr. Cabell took them; I can't stretch my memory back quite as far as that.

Cross-Q. 192. Did you see him take any of the Cotten cotton?

A. Yes, sir; I was present when the cotton was delivered there; my warehouse was at the depot; I heard Mr. Lamar speak to him about it; what surprised me so much about it was, that during the war he was a blockade runner and as soon as the war was over he

came and attached the cotton; he got all the benefit of the war as a blockade runner, and then to come down and attach the cotton we were very much surprised.

Cross-Q. 193. Did you see both lots of the Cotten cotton.

A. I think I saw both lots at the depot.

Cross-Q. 194. You saw lots marked $\frac{\text{B. T.}}{\text{B}}$ and $\frac{\text{C. S.}}{\text{I}}$?

A. $\frac{\text{B. T.}}{\text{B}}$ and $\frac{\text{C. S.}}{\text{I}}$

Cross-Q. 195. You don't know how many bales there were.

169 A. No, sir; they were originally marked, but a great many were repacked.

Cross-Q. 106. So that you could not say how many bales he seized?

A. Oh, no; I supposed the cotton on the plantation contained that number of bales; I could not go and count it.

Cross-Q. 197. Had you ever counted it?

A. No; not down to the depot.

Cross-Q. 198. Had you ever?

A. I just looked at it and supposed, from the quantity, that it was that quantity.

Cross-Q. 199. Had you ever counted it on the plantation?

A. No, sir.

Cross-Q. 200. And did you not count it at the depot?

A. No, sir.

Cross-Q. 201. You do not know, of your own knowledge, that Cabell took any of the cotton marked B. W. B., do you?

A. Not of my own knowledge.

Cross-Q. 202. You don't know, of your own knowledge, that he took any of the Whitfield cotton marked W.?

A. Not of my own knowledge.

Cross-Q. 203. You don't know, of your own knowledge, that he took any of the Parkhill marked Ⓟ?

A. No, sir.

Cross-Q. 204. You don't know, of your own knowledge, that he took any of Mrs. Bailey's cotton marked G.?

A. No, sir.

Cross-Q. 205. Or Bailey's cotton marked R. G.?

A. That would not be Bailey cotton, that would be of Gamble cotton.

Cross-Q. 206. Do you know whether all this cotton that you have referred to on your direct examination was, in 1865, in good order and good condition?

A. No, sir; it was not.

Cross-Q. 207. Some of it was in bad condition?

A. Yes, sir.

Cross-Q. 208. Cotton in bad condition and bad order was not worth fifty or sixty cents a pound?

A. It was very easy to put it in good order, because we had packing rope; there was no trouble to put it in good order;

170 the packing had been aged more or less, and we repacked it with new rope, and made it as good as ever it was.

Cross-Q. 209. With reference to the lots about which you testified on your direct examination, you have not got any recollection as to the number of bales or marks independently of this letter of February 15, 1866?

A. I had the papers, but I lost them last week.

Cross-Q. 210. You don't understand the question?

(Question repeated.)

A. No; I have no recollection outside of the paper.

Cross-Q. 211. You are willing to testify as to those numbers of bales and marks, because you see it in your own handwriting?

A. Oh, no; I remember——

Cross-Q. 212. You don't remember the number of bales or the marks, independent of the paper; or do you?

A. Well, I do remember the marks very distinctly, and the papers that I lost gave every mark and the time it was taken, but that paper is gone; I remember those marks very distinctly.

Cross-Q. 213. Look at the letter referred to on your direct examination, dated September 30, 1864, and addressed to Mr. Lamar.

A. That is my handwriting.

Cross-Q. 214. Are the statements of that letter true?

A. Yes, sir; I think that is the fa t; that is my signature.

Cross-Q. 215. You are positive about that?

A. Yes, sir; I am positive about that.

Cross-Q. 216. It is true, as stated in this letter, that the memorandum at the top is a list of all the cottons in this part of Florida; the number of bales and where the cottons were located, is it?

A. Yes, sir.

Cross-Q. 217. I understand you to have testified that the letter, February 15, 1866, Exhibit 1, was made up from other documents and papers?

A. Yes, sir; it was.

Cross-Q. 218. Those other memoranda that you referred to and that you say were lost were not memoranda that you yourself had made?

171 A. Oh, no; the memoranda that I had made I had the list of every bale of cotton that Mr. Lamar had in Florida, and the number of bales and the parties he purchased of.

Cross-Q. 219. Did you testify in Mr. Lamar's suit against the United States in the Court of Claims?

A. Yes; I think I testified in two instances.

Cross-Q. 220. Testified on his behalf?

A. I think it was on his behalf.

Cross-Q. 221. Did you testify in that case as you have in this, that these same kinds of cotton were seized by Cabell?

A. I think I did.

Cross-Q. 222. Do you know a Mr. Lyons, an agent of the Department of Justice?

A. No, sir; I have no acquaintance in Washington, except our Senators.

Cross-Q. 223. Were you in Tallahassee in 1879?

A. Yes, sir; I was there.

Cross-Q. 224. Did an agent of the Government call on you in regard to this case at that time?

A. He did.

Cross-Q. 225. That was Mr. Lyons?

A. I don't remember his name.

Cross-Q. 226. You remember an agent of the Government calling on you?

A. Yes, sir; he told me he was an agent of the Government.

Cross-Q. 227. Did you not tell that Government agent at that time that you had no personal knowledge of the seizure of any of the cotton about which you testified in the Court of Claims?

A. I don't know about that; I hardly think he put such a question to me; I don't think he took any evidence; he merely asked me to show him the papers; that is the only evidence I remember stating; I took out a paper where Mr. Cabell had taken eight or nine bales of cotton and sold it to a house in Baltimore; whether his name was Lyons I do not know.

Cross-Q. 228. The question is, didn't you tell him, in substance, at that time, in 1879, that you did not know, of your own personal knowledge, that the cotton about which you had testified in the Court of Claims was seized by Cabell?

172 A. No, sir; I don't think I did; I am quite certain of that; I may be wrong, but I think I did not; I remember him coming up, just before supper, to my warehouse, and I showed him the papers, and he took some memoranda of them.

Cross-Q. 229. Didn't you tell him this, in substance: That you did not know, of your own knowledge, that Cabell seized the number of bales stated in your deposition in the Court of Claims case?

A. Well, sir, I don't think I did; if I did I have no knowledge of it.

Cross-Q. 230. Is not that the fact, that you did not know?

A. I knew about these other.

Cross-Q. 231. But you did not know, of your own knowledge, about the number of bales seized by Cabell?

A. That is so, except these lots seized in Tallahassee.

Cross-Q. 232. You don't know the number of them of your own knowledge?

A. I didn't count them.

Cross-Q. 233. Where was the Whitfield cotton, the 91 bales of which you spoke on your direct examination?

A. I think that it was stored at Monticello, at the house of Denham & Palmer.

Cross-Q. 234. When was that put in the warehouse of Denham & Palmer?

A. I don't know.

Cross-Q. 235. Did you find it there when you became Mr. Lamar's agent, in 1863?

A. Yes; I think it was there.

Cross-Q. 236. Now, I wish you would look at this letter of yours of September 30th, 1864, and tell me whether the Whitfield cotton

was then in Florida, in that part of Florida? You stated that the letter states the truth.

A. That cotton was in Florida at the time, to the best of my knowledge.

Cross-Q. 237. Did you find it as indicated on this memorandum at the top of this letter?

A. Yes, sir; I found the marks there.

Cross-Q. 238. Did you find the ninety-one bales of Whitfield cotton, marked W, of which you testified on your direct examination?

173 A. No; I don't find that here.

Cross-Q. 239. It was not in that part of Florida at that time?

A. It was in Monticello at that time.

Cross-Q. 240. This memorandum refers to the R. G. cotton at Monticello?

A. Yes, sir.

Cross-Q. 241. If the Whitfield cotton had been at Monticello why did you tell Mr. Lamar that "above you will find a list of all the cottons in this part of Florida, the number of bales, and where the cotton was located," if the Whitfield cotton was then there?

A. I might have overlooked it like anything else in making out a memorandum; I remember it being there.

Cross-Q. 242. At what time?

A. While I was acting as his agent, in 1865.

Cross-Q. 243. What knowledge have you on the subject?

A. Nothing more than that I saw the cotton in the warehouse.

Cross-Q. 244. But here is a letter, September 30, 1864, purporting to give the list of all Lamar's cotton, and don't mention that?

A. The way I got the list of those cottons was I went to Monticello myself; I went around and got the list.

Cross-Q. 245. Do you remember seeing the Whitfield cotton at any time subsequent to the 30th of September, 1864?

A. I think I do.

Cross-Q. 246. When?

A. I think it was in the year 1863; either in that summer or fall.

Cross-Q. 247. Do you remember seeing it at any time after September 30, 1864?

A. I cannot say I saw it afterwards.

Cross-Q. 248. You are positive about that; you cannot say you saw it after September 30, 1864?

A. I am positive.

Cross-Q. 249. Were any soldiers with Mr. Cabell at the depot at the time the Croom and Cotten cotton were seized, as you have stated?

A. Yes, sir; the Government wagons brought the cotton to town.

174 Cross-Q. 250. The army wagons?

A. The army wagons.

Cross-Q. 251. What officer of the army was in command?

A. General Forster; I think he has command at Fort Warren, Boston harbor.

Cross-Q. 252. What officer was in immediate command of the soldiers about the depot or the wagon?

A. They generally went out with a corporal or sergeant.

Cross-Q. 253. Did the army wagons that brought the cotton—did they have an escort of soldiers?

A. No, sir.

Cross-Q. 254. Were soldiers on the teams?

A. A soldier was driving the team and I think they had one or two soldiers with them; it may have been the driver and two soldiers on that team.

Cross-Q. 255. What you saw was, you saw these teams coming down to the depot in army wagons, with soldiers on the wagons, and then you saw Cabell sending it off after the wagons were unloaded; is that it?

A. I saw the wagons unloaded, and when the cotton was all in I saw Mr. Cabell come there and order it away.

Cross-Q. 256. You never saw it in Mr. Cabell's possession before you saw it in the possession of the soldiers in army wagons, did you?

A. No.

Cross-Q. 257. Do you remember when you saw this shipment of Croom and Cotten cotton?

A. Yes, sir; I think, to the best of my knowledge, it was shipped in 1865, about May; I think it was between May and June, either the last of May or the 1st of June; somewhere about there.

Cross-Q. 258. Were they shipments you saw Cabell make?

A. Cabell made, and also the two lots.

Cross-Q. 259. Both at one time?

A. Both at one time at the depot.

Cross-Q. 260. In Tallahassee?

A. Yes, sir.

Cross-Q. 261. In April or May, 1865?

A. Not April; May or June, 1865; I am quite certain; I think it was about the last of May or the 1st of June.

Cross-Q. 262. How do you fix that date?

175 A. Well, I fix it in this way: There was a lot of cotton I weighed on the 26th of May; I think that cotton came in about that time.

Cross-Q. 263. By relation to another transaction?

A. Yes, sir.

Cross-Q. 264. You said Cabell was a blockade runner?

A. Yes, sir; he was a blockade runner.

Cross-Q. 265. Was he anywise connected with any of the importing or exporting companies?

A. Not that I know of.

Cross-Q. 266. He ran the blockade on his own account?

A. On his own account.

Cross-Q. 267. When did he turn out as attempting to act for the United States?

A. Just after the war, I think it was; I think the surrender came some time in April, and these officers took command of Florida; I think, it was about the 18th or 20th of May.

Cross-Q. 268. You mean that Cabell turned up in Florida as the Treasury's agent very soon after Lee's surrender?

A. Yes, sir; just after Lee's surrender.

Cross-Q. 269. That about as soon as he turned up there he seized that Croom and Cotten cotton?

A. Yes, sir.

Cross-Q. 270. So that it was in May or June?

A. Yes, sir.

Cross-Q. 271. So that it was long before this letter of November 30th, 1865, was written, was it?

A. Yes, sir.

Cross-Q. 272. This letter, November 30th, Plaintiff's Exhibit 2?

A. Yes, sir; long before that was written.

Cross-Q. 273. Referring to that letter of November, 1865; did Mr. Cabell show you the order from the Treasury Department?

A. He never showed me anything.

Cross-Q. 274. Or the order from General Newton?

A. No, sir; he never showed me anything.

Cross-Q. 275. But his character and reputation were such that you believed him?

A. Oh, well we would not doubt the gentleman's word.

Cross-Q. 276. But on the direct examination you say that
176 the order from General Newton which Mr. Cabell informed you he held—you said that you supposed that was a permit to allow the cotton to go through, but you did not know anything about it.

A. He said he had an order from General Newton, and I knew the parties shipped the same way, and I supposed it was the same way; he never showed me any papers.

Cross-Q. 277. Were the Federal soldiers in this place at that time?

A. I think they were distributed all through Florida; I think they were more or less in the different counties; for instance, Tallahassee, Monticello, Madison, those places where the depot was.

Cross-Q. 278. That is, at the stations on the railroads?

A. Yes, sir.

Cross-Q. 279. General John Newton was in command at Tallahassee in November, 1865?

A. I think he was.

Redirect by Mr. CURTIS:

Q. 280. Look at the paper now shown you, marked Plaintiff's Exhibit 6, Deposition of John P. Coles, and state in whose handwriting it is, and whose handwriting the signature is, if you know.

A. That is in my handwriting and my signature.

Q. 281. And the filing on the back of it—state about that.

A. That is in G. B. Lamar's writing.

Q. 282. Please produce and annex to your deposition, and certify

it with your signature, a true copy of the letter mentioned in the last interrogatory.

A. I will.

Q. 283. You have stated in answer to the cross-examination that there were soldiers accompanying the wagons which hauled some of this cotton into the depot in Tallahassee; state, in the first place, whether you saw any United States soldiers or men with United States uniforms on accompanying those wagons excepting the teamsters and a corporal or sergeant.

A. I did not; they were all dressed in United States uniform.

177 Q. 284. How many teamsters, if you can recollect, were there to each wagon?

A. I think there was only one who drove the team.

Q. 285. Do you know what the corporal or sergeant was there for?

A. No; I do not.

Q. 286. In the conversation which you had with Mr. Cabell, in which he spoke of an order that he had received from General Newton, and which order you said he did not exhibit to you, did he say whether the order was in writing or verbal?

A. I don't remember that.

Q. 287. What reason had you to suppose at the time that there was a corporal or a sergeant accompanied those teams when they came into Tallahassee; did you see the teams on the road, or see them under the charge of any officer who directed their movements?

A. I was at Tallahassee when the teams arrived and passed through the town, and saw a corporal with them; I supposed it was a corporal by his stripes; I didn't see any other officer but a corporal.

Q. 288. You did not see any file of soldiers, or any soldiers or army men, excepting the teamsters and the corporal?

A. That was all.

Q. 289. How do you know that the teams were Government teams?

A. Well, I could not exactly say how I knew; I merely judged by their being in charge of the driver, who was a soldier, and a corporal; they had teams with them; that is the only way I knew them; I did not go up and ask whether that was a Government team; I saw them driving with the uniform.

Q. 290. Did you see any marks on the wagons?

A. I saw U. S. A., and I concluded that must be the Government.

Q. 291. Had Mr. Cabell under his control, or within his reach, so far as you know, any means of hauling that cotton from the places where it was stored on the plantations without making use of Government wagons?

A. None.

Q. 292. Do you know of any person in Tallahassee at that time, or in its neighborhood, who could have supplied Mr. Cabell with

wagons and mules to haul between three and four hundred bales of cotton from the country into Tallahassee?

178 A. I do; he could have got other wagons besides the Government wagons; the planters would have hauled it in for him.

Q. 293. How; by contract or by being compelled to haul it in?

A. By contract.

Q. 294. He would have had to hire and pay for teams and wagons if he had not used the Government teams and wagons; is that what you mean?

A. Yes, sir; that is what I mean.

Adjourned to Wednesday, at three o'clock p. m., January 30, 1884.

NEW YORK, *January* 30, 1884.

Met pursuant to adjournment.

Present: Counsel as before.

Q. 295. (By Mr. CURTIS.) Can you remain here to attend the trial of this action, or must you return to Florida, and when do you expect to leave?

A. I cannot remain; I want to get off as soon as I can.

Adjourned to Thursday, January 31, 1884, at 11 a. m.

NEW YORK, *January* 31, 1884.

Met pursuant to adjournment.

Present: Counsel as before and the witness.

JOHN P. COLES.

Subscribed and sworn to before me, this 31st day of January, 1884.

JOHN A. SHIELDS,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

179 PLAINTIFF'S EXHIBIT No. 1. Deposition of John P. Coles. J. A. S., U. S. Com'r.

G. A. Croom,	12	B	C marked	L.
B. W. Bellamy,	56	"	"	B W B.
G. W. Whitfield,	91	"	"	W.
R. Gamble,	24	"	"	R. G.
Est. G. W. Parkhill,	23	"	"	(P)
Mrs. Wm. Bailey, Sen'r,	25	"	"	G.
F. R. Cotten,	97	"	"	B T. B.
	98	"	"	C S. I.
	426			
	91			
	335 bales.			

DEAR SIR: Above you have a list and marks of cotton seized by Mr. S. W. Cabell, as the U. S. Treasury agent for this portion of the State. He has sent from here one hundred and ninety-six (196) bales of cotton consigned to Joseph Remington, Esq., Jacksonville. I will have to go to Jacksonville to see what vessel the cotton was shipped by. You will have to furnish me with funds to attend to this business.

Yours very respectfully, JOHN P. COLES.

Tallahassee, Feb'y 15, '66.

PLAINTIFF'S EXHIBIT No. 2. January 23, 1884. J.A. S., U. S. Com'r.

TALLAHASSEE, *Nov.* 30, '65.

G. B. Lamar, Esq., Savannah.

DEAR SIR: I wrote to you on the 25th inst., and forwarded to you a duplicate copy of your papers from Gen. C. Mundee,
180 which I hope you have received ere this. I had a call from Mr. S. G. Cabell this morning, who informed me that he had an order from Treasury Department to forward all your cottons in Florida to Mr. S. Draper, New York, and also an order from Gen. Newton.

Yours very respectfully,

(S'g'd) JOHN P. COLES.

(Endorsed:) "John P. Coles, November 30, 1865, advising that S. G. Cabell had the letter of the Treasury Department to forward all my cotton to Simeon Draper." John P. Coles, witness.

PLAINTIFF'S EXHIBIT No. 3. Deposition of Jno. P. Cole. J. A. S., U. S. Comm'r.

List of Cottons and Marks given in for Confederate Taxes.

B T B	154	B | Cotton.			
C S I	98	"			
Est. J. W. Cotten,	150	"			
CHP	10				
C A T,	2	"			
T	30	"			
	444.	500	5.	222,000	
P	23	"	"	12,000	
				234,000 @ 30% $2,000.8--	$5,616
48,000 sea island, in seed, @ 12½, $6,000.8------ -------					480
283 bales of cotton belonging to Capt. D. A. Martin (J. 511)----------					3,384
					$9,480

181 TALLAHASSEE, *April* 7, 1864.

G. B. Lamar, Esq., Savannah.

DEAR SIR: Yours of the 29th ult. is received, and above you will find a list of all the cottons paid Confederate taxes on for your ac., and also 283 bales of cotton belonging to Capt. D. A. Martin, which will make the amount paid by W. R. Pettes, Esq., which is $9,480. I send a list of cottons which the insurance expires this month, April 9, '64: Bellamy, lot of cotton; 13th inst., G. W. Parkhill, 60 bales of cotton at Groversville, Ga.; on the 28th inst., Capt. D. A. Martin, 283 bales of cotton.

W. R. Pettes, Esq., paid me on my ac. for you $1,200 on the 26th ulto. I will send to you my ac. up to 1st April in a few days. I want some bagging and rope to have your cotton put in order, and if you do not send me some soon your cottons will be ruined. I will see the persons having your cottons on their plantations, and see if they are willing to take care of your cottons any longer.

Yours very respectfully,

(Signed) JOHN P. COLES.

(Endorsed:) "J. P. Coles. Ac. taxes, April 7, 1864. John P. Coles, witness."

PLAINTIFF'S EXHIBIT No. 4. Deposition of John P. Cole. J. A. S., U. S. Comm'r.

F. R. Cotton, Plantation in Leon City.

B T B	100	B | C	
C S I	98		Est. G. W. Parkhill plantation, Leon City. [P] 23 B | C (in bad order).
	198		
E	30	B | C at Tallahassee R. R. depot.	
C A J	2	" " " "	
G A C	20	or 24 bales of S. I. cotton, in the seed, at G. A. Croom plantation Leon City.	

182

B W B	270	B | C at	B. W. Bellamy plantation, Jefferson City.
R G	30	"	Monticello "
G	25	"	Mrs. Gen. Bailey, " "
	325		

575 bales. Gov. J. Milton, 42 B | C sent to Columbus, Ga., to M. P. Ellis.

TALLAHASSEE, *Sept.* 30, '64.

G. B. Lamar, Esq., Savannah.

DEAR SIR: Your favor of the 12th and 14th inst. is received, and the contents noted. Above you will find a list of all the cotton in in this part of Florida, the number of bales, and where the cotton is located. Mr. Croom will have his sea island cotton ginned as soon

as he can. He has received on account of his cotton $7,500 in cash. Mr. Eppes has delivered all his cotton. Gov. J. Milton is out of town, and as soon as he comes back I will see him.

Yours very respectfully, JOHN P. COLES.

JOHN P. COLES, *Witness.*

(Indorsed:) "J. P. Coles. Statement of cotton, Sept. 30, 1864."

183 PLAINTIFF'S EXHIBIT 5. Deposition of J. P. Coles. J. A. S., U. S. C.

Statement No. 2 of Cash Payments by Wm. W. Cheever, Agt. for G. B. Lamar.

DR.

Nov.	21.	Paid	F. Chairs, ac. cotton	$4,000 00	
"		"	from ins. on cotton for C. A. L. L.	40 00	
"		"	" " at Tal. depot	75 00	
"		"	J. J. Williams, ac. C. A. L. L.	2,516 41	
Dec.	1.	"	Mrs. Winthrop, on ac. cotton	13,101 45	
"	2.	"	J. J. Bradley, "	12,000 00	
"	"	"	F. Chairs, bal. on 185 B | C	6,827 00	
"	8.	"	T. B. Chairs, on ac. cotton	1,000 00	
"	4.	"	R. Patten, for 4 B | C	268 10	
"		"	R. Gamble, Jr., for 23 B | C	1,460 00	
					$41,287 96
"		"	A. Hopkins, bal. on 36 B | C	$529 41	
"		"	W. Call, ac. 80 B | C	4,845 12	
"	8.	"	J. J. Williams, ac. C. A. L. L.	4,500 00	
"	12.	"	J. H. Bull, agt., in. on 20 M. int. notes	148 00	
Nov.	21.	"	Pen. and Gro. R. R., frt. bill	363 00	
Dec.	18.	"	S. C. White, ac. 15 B | C	1,035 97	
"	25.	"	J. R. Harris & Co., tobacco ac.	20,000 00	
"	"	"	J. J. Williams, ac. C. A. L. L.	4,000 00	
"	"	"	Denham & Palmer, frt. on cotton	2,049 00	
"	"	"	Geo. H. Meginnis, 34 B | C	2,309 39	
					39,779 39
"	"	"	R. G. Shepard, 13 B | C	$847 00	
"	"	"	Benj. Chairs, Sr., ac. cotton	600 00	
"	27.	"	F. Chairs, for 32 B | C	2,080 45	
"	"	"	O. L. Taylor, for 5 B | C	348 05	
"	"	"	Heir & Cole, for weighing and m'k'g	121 72	
"	"	"	C. B. West, for 2 B | C	128 05	
"	23.	"	B. W. Bellamy, ac. cotton	500 00	
"	27.	"	Ditto, "	9,931 50	
Jan'y	7.	"	Geo. W. Scott, 32 B | C	1,759 27	
Dec'r	27.	"	Benj. Chairs, Jr., bal. on 18 B | C	204 70	
Jan'y	7.	"	Benj. Chairs, Sr., bal. on 227 B | C	2,687 12	
					19,207 86
			Am't carried over		$100,275 81
			Am't bro't over	$100,275 81	
Jan'y	7.	Paid	S. C. Williams, 3 B | C	180 00	
Dec.	27.	"	premium ins. on cotton at depot	25 00	
"	"	"	S. Simkins, 258 B | C	14,133 64	
Jan'y	8.	"	J. P. Chairs, for 100 B | C	7,192 15	
"	9.	"	Geo. H. Meginnis, 93 B | C	6,195 68	
"	"	"	Est. M. Palmer, 58 B | C	3,109 73	
"	"	"	Geo. Henstown, ac. 41 B | C	1,000 00	
"	"	"	T. Randall, ac. 42 B | C	2,400 00	
"	"	"	J. D. Branch, bal. on 23 B | C	803 00	
					$135,315 0

184

Jan'y	9.	Paid	Wm. N. Taylor, bal. on 44 B | C	$310 20	
"	"	"	Jas. Kirksey, prem. on ins.	83 33	
"	10.	"	S. C. Wilson, bal. on 3 B | C	11 62	
"	"	"	R. Aiken, for 4 B | C	286 52	
"	"	"	J. J. Williams, for corn C. A. L. L.	630 30	
"	"	"	J. A. Craig, ac. 35 B | C	2,000 00	
"	"	"	E. Bradford, 113 B | C	8,672 40	
"	"	"	W. D. Bloxham, 38 B | C	2,730 50	
"	"	"	A. A. Fisher, 7 B | C	395 54	
"	"	"	Mrs. Whittaker, ac. cotton	1,000 00	
					$16,120 41
"	"	"	R. R. fr't bills	$214 00	
"	"	"	J. R. Bradford, 46 B | C	3,453 19	
"	"	"	R. B. Patten, 39 B | C	2,732 90	
"	"	"	Mrs. Murat, bal. on 4 B | C	6 10	
"	"	"	B. C. Lewis, 126 B | C	10,362 60	
"	"	"	Cotten, on ac. cotton	1,000 00	
"	27.	"	J. J. Bradley, ac. cotton	1,300 00	
Feb'y	4.	"	Cotten, ac. cotton	1,921 50	
"	5.	"	J. J. Bradley, ac. cotton	800 00	
"	"	"	Cotten, ac. cotton	5,033 00	
"	"	"	" "	12,123 33	
"	"	"	J. J. Bradley, bal. on 318 B | C	6,351 68	
"	"	"	Denham & Palmer, fr't bill	1,896 71	
					47,395 01
			Am't carried over		$198,830 43
			Am't bro't forw'd		$198,830 00
Feb'y	6.	Paid	J. Milton, ac. cotton	$1,035 68	
"	"	"	Cotten, ac. cotton	195 08	
"	"	"	Mrs. Whitaker, 71 B | C	5,695 80	
"	"	"	ins. 126 B | C depot	50 00	
"	"	"	" "	7 50	
M'ch	"	"	G. H. Meginnis, 32 B | C	2,356 62	
"	"	"	B. W. Bellamy, ac. cotton	142 72	
"	"	"	prem. insurance	275 00	
"	"	"	J. J. Williams, bal. ac. 263 B | C, ac. C. A. L. L.	534 61	
"	"	"	J. J. Williams bal. 452 B | C	322 99	
					10,616 00
"	"	"	R. R. f't bill	112 00	
"	"	"	D. Meginnis Ex. W., 83 B | C	6,748 33	
"	"	"	fr't on long cotton 8 | a, J. W. Lathrop & Co.	3,000 00	
"	"	"	S. Simkins, ac. cotton	3,000 00	
"	"	"	W. G. Bnyck, 13 B | C	725 00	
"	"	"	J. S. Rush Commins, ac. G. B. L.	56 82	
"	"	"	prem. insurance	1,800 00	
"	"	"	Cotten, ac. cotton	25,417 53	
					48,163 68
"	"	"	" "	4,804 00	
"	"	"	Amos Whitehead, ac. cotton	2,500 00	
"	"	"	Est. Whitaker, B | C	2,125 25	
"	"	"	prem. insurance	137 50	
"	"	"	John Milton, ac. cotton	4,500 00	
					14,066 75
					$271,676 43
			Am't paid for long cotton, all of which is not yet del'd		62,000 00
					$333,676 43

185 CREDIT.

Dec.	12.	By am't rec'd per Wm. Lyon		$100,000 00		
		" bill bagging and rope, Simkins		3,401 80		
		Am't carried for'd		103,401 80		
		By am't brought over			$103,401 80	
		" bill bagging and rope, Bradley		$1,400 07		
		" fr't on above and Simkin's lot		45 60		
		" d'f't favor G. A. Croom		6,500 00		
		" " A. Hopkins		1,673 81		
		" " J. C. Plant		3,270 00		
		" " G. A. Croom		364 25		
Feb'y	23.	" " C. A. L. L.		604 62		
M'ch	4.	" " J. Milton		3,464 32		
"	"	" " A. Hopkins & Co.		2,398 92		
					19,721 59	
					$123,123 39	
		" am't rec'd in Sav'h			50,000 00	
Jan.	26.	" check on State B'k of Fla.			20,000 00	
"	7.	" remittance			50,000 00	
"	20.	" "			25,000 00	
Dec.	2.	" dr'f't fav'r St. B'k			20,527 00	
		" " Boston & V.			976 16	
					$339,626 55	
		Am't debit			333,676 43	
		Am't on hand			$5,950 12	

Tallahassee, M'ch 10, 1863.

WM. W. CHEEVER, *Ag't.*
For G. B. LAMAR.

JOHN P. COLES, *Witness.*

PLAINTIFF'S EXHIBIT No. 6. Deposition of J. P. Cole. J. A. S., U S. Com.

TALLAHASSEE, *Aug.* 24, '65.

G. B. Lamar, Esq., Savannah.

DEAR SIR: There are now stored in the immediate neighborhood of this city several lots of cotton purchased on your account
186 by Mr. W. W. Cheever. As I had charge of the weighing of all the cotton purchased by you I know the points where it all lies. Government agents are, I think, informed, making strict inquiries to ascertain if any of your property is in this neighborhood. It is possible, and perhaps easy, at the present time to save it; the chance of doing so decreases by delay. If you desire that it should be placed beyond the reach of these Treasury agents, and wish me to do so, write me in regard to it, and give me your views and instructions.

Yours, very respectfully, JOHN P. COLES.

(Indorsed:) "John P. Coles, August 24, 1865. Denham & Palmer."

JOHN P. COLES, *Witness.*

187 And after the reading in evidence of the above recited depositions the following proceedings took place in the continuation of the trial:

Mr. CURTIS: I now read a notice to produce a paper, dated October 29th, 1884:

"Please take notice to produce at the trial of this action the original or a certified copy of an opinion in writing given by C. Eames, Esq., counselor-at-law to the defendant herein, dated at Washington, December 8th, 1866, relative to the 426 bales of cotton referred to in this action. A copy certified from the files of the Treasury will be accepted as a compliance with this notice. In default of which secondary evidence will be given of its contents."

Gentlemen, have you that paper?

Mr. CLARKE: I do not know whether we will produce anything under that notice. I understand that we have a paper addressed by C. Eames, Esq., to the defendant, which I produce. But I do not produce anything as "given" by him.

Mr. CURTIS: You not only have the paper in your possession, but you have a gentleman sitting by your elbow who knows that to be the signature of Mr. Eames.

188 Mr. CLARKE: There is no point made about that. The question is as to the connection of Mr. McCulloch with it. I am not going to admit that he had any connection. You have worded your notice to produce in such a manner that if I produce it I will admit it; there is such a paper on file——

Mr. CURTIS: That is what I want.

Mr. CLARKE: We produce it as a paper on file addressed to Hugh McCulloch.

Mr. CURTIS: That is all that I want.

Mr. CLARKE: I produce this paper as a paper on file in the Treasury Department, but not otherwise.

Mr. CURTIS: Do you admit this to be the signature of Mr. Eames?

Mr. CLARKE: I do not know about that.

Mr. CURTIS: There is a gentleman in court who assisted you in the preparation of this case, and who knows all about this paper, and knows it to be Mr. Eames' opinion. He told me so himself in Washington.

Mr. CLARKE: I have no doubt about it, but I do not know anything about it. If the gentleman says that he knows it to be Mr. Eames' signature, that is sufficient. I presume that it is, be-

189 cause of the fact that the paper is on file in the Treasury Department.

Mr. CURTIS: We let it go on that. I offer this paper in evidence.

Mr. CLARK: I object to it, on the ground that Mr. Eames' opinion is dated Dec. 8, 1866, which is after the sale of the cotton.

After some discussion by the respective counsel:

The COURT: I am willing to admit the paper, with the understanding that the legal opinion and conclusions of Mr. Eames are not evidence for any purpose.

Mr. CURTIS: Of course not.

Mr. CLARK: Your honor will give us an exception. I object also on the ground that it is not brought home to the defendant. The defendant is not to be bound by what Mr. Eames says on any evidence that there is in this case so far.

Mr. CURTIS: That is a question for the jury, whether it is brought home to the defendant or not. Mr. Lamar testifies that the defendant agreed to refer the question to Mr. Eames; and the next thing we know is that Mr. Eames' opinion is on file in the Treasury. If that is not enough to go to the jury I do not know how we can have anything more.

Mr. CLARK: I suppose it is understood that the whole paper is in?

190 Mr. CURTIS: Yes; but I only wish to read that which relates to the Florida cotton; that is all that I propose to read; you can read the rest of it if you want to. I read from this part of the opinion: "In the matter of the claims of G. B. Lamar and others to certain cotton held by the Treasury Department, as captured and confiscable property, by Charles Eames, special counsel, Treasury Department, Washington, D. C., Dec. 8, 1866." commencing on page 6 of my copy:

191 But it is the claim for the cotton seized in Florida by the Treasury agent in the summer of 1865 which the counsel for Mr. Lamar and for the two New York corporations evidently regard as the strongest branch of their case. This claim is placed in the papers upon three distinct allegations of fact, each of which may, in my judgment, be admitted to be sustained by the proofs. These allegations are:

First. That there was no military capture of these Florida cottons.

Second. That these cottons were purchased by Mr. Lamar, or by his agent, at the close of the year 1862, and in the early part of 1863, in their individual names and for their private account, and that the purchase-money for them was furnished by Mr. Lamar, and duly paid. and that the cottons were deposited, subject to the order of the purchaser.

Third. That on the 6th of January, 1865, several months before the seizure of the cotton, Mr. Lamar took, and has since kept, the amnesty oath, as prescribed in the proclamation of President Lincoln of the 8th of December, 1863.

192 From these facts, thus alleged, Mr. Lamar and his counsel deduce the conclusion, as matter of law, that these Florida cottons were, at the time of their seizure by the Treasury agent, Mr. Lamar's property; and that the amnesty oath, as taken by him, cured all defects in his title to the property, if any previously existed by reason of his participation in the rebellion, and operated to restore to him, to all legal intents and purposes, his full rights of ownership. The correctness of these legal conclusions is, in my judgment, the main question in the case before you.

It might, indeed, be urged that even upon the assumption of the

matters of fact above alleged, and of the correctness of the legal conclusions deduced from them, as above stated, still there would be a doubt as to the right of the Department to restore the Florida cotton, in anticipation of the judgment of the Court of Claims, and without a reference of the case to that tribunal. Upon such an assumption, however, as to the facts and the law, I should without hesitation advise that the Department had rightful jurisdiction to determine the question of restoration, and to restore in its discretion. I should hold this opinion upon the ground that, in
193 the case thus supposed and assumed, the act of seizure by the Treasury agent must be held by the Department to have been wholly unauthorized by law or by instructions, and, therefore, from the beginning, utterly null and void. To correct and control in all its operations such an unlawful act, so done by one of its agents, is, in my judgment, clearly within the lawful administrative sphere of the Department. I hold this remedial right of the Department to be just as clear in such a case as would be the right of the head of the Department, if present upon the spot, to prohibit and prevent such tortious seizure.

But in this case, as it stands before me upon all the proofs, I am clearly of opinion that the legal conclusions which Mr. Lamar and his counsel have deduced from the allegations of fact above referred to, as to his right and title to this cotton as against the United States, are wholly unsustained by those facts as stated, and are entirely erroneous.

It is abundantly established in proof, and does not appear to be disputed either by Mr. Lamar or his counsel, that during the same period, at the close of 1862 and the early part of 1863, in
194 which Mr. Lamar and his agents were purchasing and placing in deposit these cottons, he, with them, was also engaged in organizing, preparing and setting on foot a blockade-running association, under the name and style of the "Exporting and Importing Company of Georgia." Of this company Mr. Lamar is conceded, and well known, to have been the president and principal stockholder, and the manager. The company was plainly formed by him and those in partnership with him, of whom Mr. Cheever was one, for the purpose of enabling them to dispose of their cottons and to run them through the blockade. It is fully in proof that during the period in question some ten or twelve thousand bales of cotton were purchased in Florida by Lamar and his agents at low prices, and that a large portion of the same were then resold by Lamar, and for his account, and at a large profit to the company which he had thus formed. It is shown that the stockholders in the company were to pay, and did pay, for their shares in cash, and not in cotton, and the plan of operations of Mr. Lamar and his agents plainly was to purchase and collect the cottons in their individual names, and then turn them over to the company at prices
195 largely advanced. It is fully proved that the blockade-running purpose and character of the company were well known and were fully disclosed and avowed by Lamar and his agents while inducing other parties to become stockholders. It is fully proved

that the company procured one or more vessels from England for its operations, and that its plan of business was to import return cargoes consisting, in whole or in part, of munitions and supplies for the rebel government, and of some of which that government was the owner. It is also in proof that while a leading object in the formation of the company was, of course, the private gain of its projectors and managers, it had beside the open and avowed purpose of affording aid to the rebel government and cause. All these facts, and more of the same character, touching the nature of this company and the line of business in which Lamar and Cheever were thus engaged, are fully set forth in the depositions on file with the papers before me, of two of the stockholders, Isaac R. Harris and James Y. Jones. Their depositions were taken separately, and before different officers of the army, and in all substantial respects they corroborate each other. No at-

196 tempt is made to impeach the witnesses, nor even to contradict them by any other testimony than the statements of Mr. Lamar and his agents, and even in these I find but slight contradiction of the main facts specifically stated by the witnesses. They both base their testimony upon the information given to them as stockholders by Lamar and Cheever, orally and in correspondence; and, as further showing the full means of information possessed by the witness Harris, it may be mentioned that he testifies that he himself expended in 1862 and 1863 more than one hundred and thirty-three thousand dollars ($133,000) in purchases of cotton and tobacco, made through Mr. Cheever, the invoices of which were forwarded to Lamar, who furnished the funds for payment. It may be added that this witness, in another deposition, under a cross-examination instituted by Cheever to sustain his claim, testifies that he believes that the tobacco so purchased was intended for the home market; but he does not extend this statement to the cotton. Indeed, in respect to this article such a statement would have been incredible on its face, and opposed to all the rest of the proof.

197 In view of all this testimony, it is impossible to avoid the conclusion that the Florida cotton now claimed by Mr. Lamar is the remnant of a great quantity purchased and collected, or left on deposit, by him, with the avowed and notorious purpose of running it out of the country through the blockade, by means of the company which he formed and managed, and put into operation for that purpose. It is alleged by Mr. Lamar, and by his counsel, and is probably true, that the operations of this company were soon suspended, and its ships transferred to another blockade-running company in South Carolina. It is also alleged by Mr. Lamar, and it may be true, that the Florida cottons now claimed by him, or some portion of them, had not been sold by him, before their seizure, to the blockade-running company; but neither of these averments, even if true to their whole extent, touch or affect the conclusive fact that the cottons were bought by Lamar, notoriously in the prosecution of his plan for blockade-running, and with a view to exportation, in the course of that business, through the agency of the company.

198 Upon these facts, as they are clearly proved, I am of opinion that the purchases of these cottons in Florida by Mr. Lamar and his agents, openly and avowedly for this unlawful purpose, were and are in law wholly null and void; that they conveyed no title as against the United States to the cottons so purchased, and that such sale and purchase were not only by operation of law wholly invalid as a transfer of title to the purchaser, but that they were, both on the part of the vendors and the vendee, acts done in aid of the rebellion, and a conversion of the property purchased to the use and aid of the rebellion; and that, therefore, by such act of sale and purchase, the cotton became forfeited to the United States, and were, by reason of such predicament, rightfully seized and held by the Treasury agent.

A brief reference to familiar provisions of law now in force will put the soundness of these conclusions, as I think, beyond a doubt. The first, second, and third sections of the act of August 6th, 1861, provide in substance that any property in any way disposed of in a manner to aid and abet the rebellion, with the knowledge and consent of its owner, shall be held to be liable wherever
199 found, both to capture and condemnation in the prize courts as prize of war, and also to seizure and municipal forfeiture in proceedings on the instance side of the court. This twofold operation of the statute, both as a statute of prize and also of municipal forfeiture, has lead to some hesitation and doubt as to its true construction. But its meaning, I think, is clear. It fixes upon the property within its purview the quality of enemy property condemnable as prize of war when captured and libelled as such; and in case there be no such capture, then it subjects the property to municipal forfeiture whenever and by whomsoever it may be seized and proceeded against.

I have heretofore advised the Department, and the Department has held, that property sold or bought with known purpose to run it through the blockade, or in the regular business of persons engaging in that operation, is within the penal provisions of this act; and I am thus of opinion that, even if the claimants in this case should obtain a favorable judgment in the Court of Claims, it might be still the duty of the Department, before restoring the proceeds of the cottons, to have them duly libelled for forfeiture in pursuance of this act of August 6th, 1861.

200 I have thought it right to restate these elementary views of the law as they have been held and heretofore applied by the Department, because the claimants and their counsel in this case, as in other cases, seem to be of opinion that a disposal or destination of property to run the blockade, however notorious, does not affect it with forfeiture under the law, unless and until it be found in actual process of breach of blockade. But this is a total mistake. When property is found running the blockade, then, and not before, it is by the law of blockade condemnable as prize of war, but by the operation of municipal statute the same property may be forfeited, and often is forfeited, by being destined to an unlawful use or purpose long before being found engaged in a blockade-breaking voy-

age. Such, for example, has been adjudged to be the predicament of property shipped in time of war in a foreign port in violation of non-intercourse law. In such case the municipal forfeiture, taking effect from the date of the act of unlawful shipment, not only extinguishes from that date, and before seizure, the owner's title to the property, but avoids also the right of the intervening
201 innocent purchaser without notice, and yields only to a statutory power of remission or in a case of subsequent capture, *jure belli*, to the parmount title of the captor, when established in a prize court by final decree of condemnation as a prize of war, and of distribution under prize statutes.

But even if the act of 6th of August, 1861, were not applicable in defeat of Mr. Lamar's claim, as I hold it to be, there are other and more stringent provisions of law which, in my judgment, absolutely annul and defeat all his claim of title as purchaser of these cottons.

The sixth section of the act of 17th June, 1862, known as the confiscation act, provides that after the expiration of a certain period, which terminated on the 25th of September, 1862, the property of all persons in the United States still engaged in aiding and abetting the rebellion shall be liable to seizure and confiscation; and the same section then provides that any sale or transfer of any such property by any such owner shall be invalid and void to all intents and purposes. Now it is, in my opinion, indisputable that the owner
202 of cotton who knowingly sells and transfers it to a person engaged in a plan of blockade running, with the view and expectation that it is to take that direction and be so disposed of in the regular course of such business of the purchaser, does, by such act of sale and transfer, himself engage in aiding and abetting the rebellion, and, therefore, by the law, his sale and transfer fixing upon him the continuing character of an aider and abettor of the rebellion, is, under this section of the law, as a transfer of legal title, utterly void. The act of the purchaser who takes the cotton for such an unlawful purpose is, in this respect, equally and for the same reason invalid and null.

Upon these grounds I hold that Mr. Lamar never acquired a valid title to the Florida cotton which he now claims; but that, on the contrary, under the confiscation act, the transfer to him and purchase by him gave him no title whatever. And if this be so, it, of course, extinguishes all color of title in the corporations who claim to be, in respect to this cotton, his assignees.

There is also a third provision of law, the further operation
203 of which, to the same effect, upon Mr. Lamar's claim may now be properly noticed.

The third section of the supplemental abandoned and captured property act of the 2nd of July, 1864, gives statutory definition of the legal meaning of the term "abandoned property," and this definition is adopted and acted upon in the Treasury instructions issued in pursuance of that act. This statutory definition is in the following words:

"All property, real or personal, described in the acts to which this

is in addition shall be regarded as abandoned when the lawful owner thereof shall be voluntarily absent therefrom and engaged, either in arms or otherwise, in aiding or encouraging the rebellion."

Among the acts referred to in this definition as "acts to which this is in addition" is the confiscation act of 17th June, 1862. The effect of the statutory definition, then, is to provide that any property disposed of by its owner with a view to aid and encourage the rebellion, and thus placed, as we have seen, within the prohibition and penalties of the confiscation act, must be regarded as "abandoned property" whenever the owner, in making such un-
204 lawful disposition of it, shall put it out of his own possession, and thereby separate himself and become voluntarily absent from it. That this is the true construction of this provision of law is made manifest when it is borne in mind that such disposition of property by its owner is, so long as it continues, manifestly an aiding and encouraging by him of the rebellion, and that he thus, being an aider and abettor of the rebellion, through the instrumentality of his property thus disposed of, has, by the very act of disposition, separated himself from it or from the control of it. In this view I have no doubt that these cottons, by reason of such disposition of them in aid of the rebellion, must, in the absence of any lawful owner, be regarded under the definition in the act as being, at the time of their seizure, abandoned property. This being so, I advise you without hesitation that the seizure of them by the Treasury agent was right and lawful, and that their restoration in themselves, or in their proceeds by the Treasury Department would be an act in defeat of the law, and wholly beyond your jurisdiction.

It is proper to mention here what is abundantly obvious that
205 all these provisions of law, as we have seen them operating upon the Florida cottons, apply with equal force to the cottons which, as we have seen, were captured by the military forces in Georgia. That fact of capture and the subsequent transfer to the Treasury agent would, as above stated, even if they stood alone, exclude the jurisdiction of the Department to restore. But upon the legal grounds now considered it is obvious that if those Georgia cottons, instead of having been captured by the military, had been, like the Florida cottons, merely seized and held by the Treasury agent, they must still by exact parity of penal predicament share in respect to this claim the same fate with the cottons seized in Florida. Both were alike forfeited to the United States by the unlawful destination for which they were held, and by the unlawful purpose in which they were bought and sold.

But in the face of all these considerations it is urged with persistency and apparent confidence, by Mr. Lamar and his counsel, that the amnesty oath, as taken by him on the 6th of January, 1865,
cures all these legal defects in his title, shields the cotton pur-
206 chased in his name and on his account from all the penalties which they had incurred, and restores to him intact all the rights of ownership.

This view of the effect and operation upon this claim of the am-

nesty oath, as prescribed in the proclamation of amnesty of the 18th December, 1863, I hold to be a manifest error in law.

The effect, and the whole effect, of the oath of amnesty is to purge away from the person who takes and keeps it his previously contracted criminal character and quality as a traitor and a rebel, and to restore to him his personal rights to his property in so far as those rights may have been previously defeated or affected by such personal character and quality, which the amnesty condones and extinguishes. All his property, but for the amnesty, would be, as we have seen under the law, as being the property of a rebel, subject to seizure and confiscation. That doom of the property, resulting merely from the personal status of the owner as a rebel and traitor, the amnesty relieves when the property has no other taint of forfeiture upon it than that which flows from such personal status.

To such property, otherwise untainted by forfeiture, the owner
207 would have an absolute "right," but for his disability as an owner, arising out of the fact of his being a rebel and a traitor. The amnesty relieving him from the pressure of such disability restores to him all the rights of property which were previously barred only by such disability. And here the operation of the amnesty upon his property wholly terminates. In other words, it operates as a general pardon of his personal criminality. Now, in this view, it is plain that if the rebel owner of any particular property has made it the instrument and the means of a special violation of the law, and thereby placed it within a predicament which has incurred a forfeiture under the law, without regard to the personal character of the owner as a rebel, then surely the amnesty oath does in nowise defeat such forfeiture of such property, because the amnesty purports only to restore the rebel owner's rights of property in so far as they have been defeated by that personal quality which is renounced in the oath and effaced by the amnesty. And certainly his claim to property which, irrespective of such personal quality, and as being the thing by which the offence
208 has been committed, has incurred forfeiture, as the specific statutory punishment of that offence is not in any sense a right of property.

To illustrate this proposition: Suppose that a rebel has, by means of his commercial connections in the loyal States, perpetrated an act of smuggling by having brought jewels into the country in violation of the revenue laws, without paying duties upon them, he then, before their seizure, takes the oath of amnesty, and, asserting its restoration of all his rights of property, he claims that the smuggled jewels shall pass peaceably into his possession; surely he will be answered conclusively that his claim to those jewels is not a right of property which the amnesty restores to him, because they are found in a predicament of forfeiture irrespective of his personal crime of treason which the amnesty extinguishes. Again, suppose that just after Mr. Lamar had taken the amnesty oath one of his ships, laden in whole or in part with munitions and supplies for the rebel authorities, had arrived at Savannah and been seized there

under the acts of Congress above referred to, would it not be
209 wholly frivolous for Mr. Lamar to come forward with his oath of amnesty, and demand, by virtue of its operation, the restoration to him of such ship and cargo? Surely he would be answered that, without regard to his pardon or to his previous unpardoned condition, the ship and cargo were by their own unlawful and penal predicament forfeited to the United States.

Just the same rule and reason apply to these Florida cottons claimed by Mr. Lamar. In and by their own predicament, irrespective of Mr. Lamar's character as a rebel, they were, at the time of seizure, confiscable property. They were also, as we have seen by statutory definition, abandoned property, and as such, by reason of their own predicament, they were, before the seizure, forfeited to the United States, and the seizure was but the reduction by the Government into possession of its title to the cotton already accrued by such forfeiture. The forfeiture attached under the law both *ad rem* and *in re*. The maintenance of the forfeiture so incurred by the cottons is plainly, from beginning to end, a proceeding wholly *in rem*, and not at all *in personam*, as against the claimants. Now, it is plain that the amnesty, by the whole tenor of its terms,
210 acts like all other general pardons, *in personam*, and touches property and rights of property only through its operation upon the antecedent personal status of the owner. It can be effectually pleaded in bar of the confiscation of such property only as is proceeded against, or is liable to be proceeded against, upon the sole ground that its owner is a rebel. It is no bar to a proceeding for forfeiture against property found within a different and additional liability to forfeiture, and against which the seizure and forfeiture proceed upon wholly distinct grounds, both of fact and law.

If this limitation of the effect of the amnesty be not admitted, then we shall be forced to the absurd conclusion that a rebel who has taken the oath is placed, by its operation, in a better position than that of the loyal citizen, whose property is forfeited under the fifth section of the non-intercourse act of July 13, 1861, whenever, during the period of non-intercourse, it is found without a license in *transitu*, with or without his consent, between the loyal and the insurrectionary States; or than that of the neutral foreigner, who, though not owing allegiance to the United States, must yet
211 lose his property by forfeiture, under the act of August 6, 1861, whenever it may be found to have been converted or destined, with his consent, to the use or aid of the rebellion.

In these views I have no doubt nor difficulty in advising you that the amnesty oath, as taken by Mr. Lamar, gives him no right whatever to claim the restoration by the Department of any of the cottons which had, under the law, before seizure, incurred forfeiture by reason of the unlawful uses to which they were destined, and the penal position in which they were found.

It is proper, before closing this branch of my opinion in this case, to mention the fact that there is among the papers submitted to me in the case what purports to be a letter, subsequently written by Mr. Lamar, which tends strongly to show that he took the oath mainly

to save his property, and assigned as one of his justifications for so doing the fact that he should thus prevent his property from enuring to the benefit of the United States. The paper, indeed, throughout exhibits sentiments and feelings highly disloyal, and expresses vehement resentment against the Government of the United
212 States. This paper is transmitted to the Department by one of the Treasury agents as having been found among the papers of Mr. Lamar, and seized by the military authorities with a view to his trial before a military tribunal. It is to be regretted, certainly, that such a paper should have been written by any person professing to have taken the amnesty oath in good faith. But as the papers before me do not show any overt act of treason to have been perpetrated by Mr. Lamar since he took the oath, I have not permitted my opinion as to the character of his claim or the operation of the oath upon it to be affected by the paper in question. On the contrary, I have examined and advised upon the claim upon the assumption that Mr. Lamar has taken and has observed the amnesty oath in good faith. Indeed, considering the number of claims before the Department, in support of which an oath of amnesty has been or may be alleged, and seeing the wholly erroneous views of its legal operation usually insisted upon by claimants, and which may have occasioned doubt or difficulty in some other quarters, I have felt it to be my duty to meet the question directly and fully, and to advise you somewhat in detail of the opinion
213 which, after deliberate examination, I have formed upon the whole subject.

The provisions of the law above referred to and the conclusions deduced from them, in their operation to *bar* the claim of Mr. Lamar, are, in my judgment, equally effectual to defeat the claim of the administrator of W. W. Cheever to any portion of the cottons in question. Mr. Cheever was a member and officer of the blockade-running company, and the associate, copartner, or agent of Mr. Lamar in all the unlawful transactions and schemes above described, and his claim to any portion of these cottons, in so far as it may have been valid against Mr. Lamar or founded upon alleged purchase of any of them for his own account, is undoubtedly extinguished by the forfeiture of the cottons to the United States.

I can perceive no well-founded reason for doubt that the views of the law and of its operation upon this case which I have thus submitted will be sustained when brought to the test of judicial examination; but whether this confidence on my part be well founded or not, they are at least sufficient to make the admission of these
214 claims by the Department in advance, and to the exclusion of such judicial determination, manifestly inexpedient. And just this is the practical question of administrative policy now before the Department in this case.

The claim of Mr. Cabell for reimbursement, compensation, and a share of the property seized by him seems fit to be adjusted in the

usual manner, according to the regulations of the Department applied to such proceedings of its agents.

I am, sir, with the highest respect, your obedient servant,

C. EAMES,
Special Counsel.

Hon. HUGH MCCULLOCH, *Secretary of the Treasury.*

215 And thereupon the counsel for the plaintiff read in evidence, under a stipulation signed by the respective counsel for the plaintiff and the defendant, which recited and agreed as follows, to wit:

It is hereby stipulated and agreed that on the trial of this action either party may read at the trial any of the papers and documents listed below, from a certified copy of the record of the case of Gazaway B. Lamar *vs.* The United States, No. 3222 in the Court of Claims, with the same force and effect as if the same were certified for the present action, and subject to all legal exceptions as to competency, relevancy, or materiality of the contents thereof, the following documentary proofs:

216 EXHIBIT G.

HEADQUARTERS DEPARTMENT OF FLORIDA,
ASSISTANT ADJUTANT GENERAL'S OFFICE,
TALLAHASSEE, *October 29th*, 1865.

Hon. Hugh McCulloch,
Secretary of the Treasury U. S., Washington, D. C.

SIR: I have the honor to transmit herewith, for your investigation and decision, the following documents in relation to a certain lot of cotton, &c.:

* * * * * * * *

While addressing you thus, I beg leave to add that the acting aid to the ass't sp'l ag't, as Mr. Cabell is called, is under the direction or orders of the special agent, stationed at Apalachicola; and as communications between that place and this are often entirely cut off, and in the best time very difficult, I respectfully recommend Mr. S. G. Cabell for the appointment of special agent for Middle Florida. This recommendation is based upon my conviction of the trustworthiness, energy, and faithfulness of Mr. Cabell as an U. S. officer, that the service will be benefited by it.

I have the honor to be, very respectfully, your ob't servant,

(Signed) J. G. FOSTER,
M. G. Com'd'g.

(Indorsed:) Exhibits A, B, C, D, E, F, & G, accompanying the petition of S. G. Cabell of Nov. 14, 1865.

(Copy.)

II.

TREASURY DEPARTMENT, *November 17th*, 1865.

SIR: I have received your application for compensation for
217 certain services performed by you under an appointment from J. H. Alexander, Esq., ass't special agent, at Pensacola and Apalachicola, Fla., in collecting and securing for the Government of the United States certain captured property therein enumerated.

In fixing the amount of your compensation Mr. Alexander transcended his authority and promised you an amount larger than has been approved by me in any case, and much larger, in my opinion, than the circumstances in these cases would justify. Nor does it appear that the property in question has been actually placed in possession of any agent of this Department, or in fact removed from the places where it was discovered. In view, however, of the stipulations made by Mr. Alexander and services you have performed and will still be able to perform for the Department in connection with the collection of this property, I desire that you return to your late field of operations and do all in your power to secure to the Government the cotton named by you, and to transport the same to a proper place of shipment at the earliest practicable day; and I will agree to make such an allowance as compensation for your services as will be liberal and just, in view of the character of your services and the risk and expenses incurred by you in performing them. To this end it will be necessary for you to keep accurate accounts and a full history of all the facts connected with all lots of cotton so secured and delivered by you.

Please acknowledge the receipt hereof, and advise me whether the proposition herein made will be accepted by you.

Very respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

S. G. Cabell,
Acting Aid to Ass't Sp'l Agent
Treas'y Dep't, Ninth Special Agency.

218 (Copy. A. B.)

III.

WASHINGTON, D. C., *Nov. 18th*, 1865.

Hon. Hugh McCulloch, Secretary of the Treas'ry,

SIR: I am in receipt of your communication of the 17th of Nov. authorizing me to return to my late field of operations in Florida and Southern Georgia, and to do all in my power to —— the Government the cotton named in my communication of the 16th of November, and I hereby signify my acceptance of your proposals.

Before leaving the city I would desire further instructions as to the mode of paying the necessary expenses to be incurred in bring-

ing the said cotton to a proper place of shipment, and to whom I am authorized to turn the cotton over *to*.

In your communication no mention is made of my claim for compensation for collecting or securing the ceder timber and the cattle named in my petition, and I understand that decisions upon these matters has been deferred.

I am, very respectfully, your ob'd't serv't,

S. G. CABELL.

(Endorsed:) S. G. Cabell, Wash., Nov. 18, '65. Accepts reappointment; asks instructions rel. thereto, expenses, &c. Ans'd Dec. 29. C, 593. Nov. 20, '65.

(Copy. A. B.)

IV.

TALLAHASSEE, FLORIDA, *December 11th*, 1865.

Hon. H. McCulloch, Secretary of the Treasury.

SIR: I have the honor to report that, agreeable to your orders contained in your letter of Nov'r 17th ult., I have already
219 shipped to Jacksonville, for shipment to New York, one hundred & seventy bales of cotton, a part of the lot formerly owned by the Exporting and Importing Company, and am engaged preparing the balance for shipment.

I have the honor to report that I proceeded to Thomasville, Georgia, and to carry out your instructions relative to the cottons at that point and vicinity, estimated at over fifteen hundred bales, and specified in my petition, to which your letter of the 17th of November was an answer, and found that the cotton was being shipped by Mr. Brown, special agent of the 5th district, upon whom I made a demand for the cottons, who refused to allow me to touch a bale of the cotton, and I was refused assistance from the military commander at that post, on the ground that he had no authority in the premises. I have respectfully to state that I served, in writing, notices upon the holders of this cotton, and was the party by whose aid the Gover'ment did finally come into the possession of the same.

I have to respectfully ask that the said special agent, Brown, be ordered to allow me to carry out my orders contained in your letter of Nove. 17th, and that he be required to make a report as to what disposition he has made of any part of said cotton, and that the military be ordered to aid me in guarding the same, and such other assistance as they may able to render.

I have the honor to be, very respectfully, your ob't serv't,

S. G. CABELL,

Acting Agent, Treasury Dep't.

(Endorsed:) S. G. Cabell, Tallahassee, Dec. 11, 1865. Rel. to certain cotton at Thomasville, Ga., being shipped by Sup. Ag't Brown. Ans'd Dec. 29. C, 629. Dec. 28, 1865.

220 (Copy.)

V.

TREASURY DEPARTMENT, *December 29th*, 1865.

SIR: I have received your letter of the 11th instant, advising me that, in accordance with my instructions of Nov. 17th, you had shipped to Jacksonville, for shipment to New York, 170 bales of cotton, being part of a lot formerly owned by the Exporting and Importing Company, and that you are engaged in preparing the balance for shipment; also, that you visited Thomasville, Ga., in relation to the cotton at that point, and found that it was being shipped by Mr. Browne, supervising sp'l agent 5th agency, upon whom you made a demand for the cotton, and that he refused to allow you to touch a bale of it; stating, also, that you were the party by whose aid the Government finally came into possession of it, and asking that Mr. Browne be ordered to allow you to carry out the instructions referred to, &c., &c.

My letter of Nov. 17th, to which you refer, was not intended to authorize you to take possession of any cotton which might be found in the hands of a duly authorized agent of the Department, but was intended rather that you should co-operate with such agents, and to empower you to take into your possession any cotton belonging to Government not in the custody of any other officer of the Department, and which might not otherwise be secured by them.

Inasmuch as it appears, by the records in this Department, that the cotton at Thomasville was turned over to Mr. Browne by the military authorities in August last, and regularly receipted for by him, I must decline to comply with your request to direct him to turn it over to you.

Mr. Browne has made a representation of the matter to the Department, from which it appears that you have assumed to authorize other persons "to seize all the cotton, tobacco, and other property which heretofore belonged to the so-called Confederate
221 government." A perusal of my letter to you of Nov. 17th will show that no authority to appoint subordinates was delegated to you; nor was it intended to do more than secure your services in connection with the lots of property specified by you. No indiscriminate seizures or collections were contemplated by it; you will, therefore, withdraw any such appointments you may have given, and conform your general action accordingly.

Relative to the instructions asked for in your communication of the 18th ult., I have to say, as to the mode of paying the necessary expenses incurred in bringing cotton to a proper place of shipment, that such expenses should be paid by the vessel transporting it to New York, and the same should follow the cotton as charges, to be paid by the United States cotton agent in New York. It is thought that any vessel desiring to secure the freight will make this arrangement.

It is proper to add here that it is not necessary that the shipments of cotton to New York should be made by you. The spirit

of my instructions will be carried out as well by your delivering it to any authorized agent near where the same may be found, or at the place of shipment, and your compensation will be allowed accordingly.

Your letter of the 11th instant conveys no specific information in regard to where the cotton referred to was found, nor to whom or by what vessel or conveyance the same was shipped. In this connection I desire to call your attention to that paragraph of my letter of Nov. 17th requiring you to keep accurate accounts and a full list of all the facts connected with any lots of cotton secured and delivered by you. A copy of this record and history should be forwarded to the Department immediately on the shipment of any lot, and a copy should also be furnished to the agent to whom it is turned over or consigned.

Very respectfully,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

S. G. Cabell, Esq.,
Acting Aid Treasury Department, Tallahassee, Fla.

222 (Copy.)

VI.

TREASURY DEPARTMENT, *January 16th*, 1866.

GENTLEMEN: I have received your memorial on behalf of Samuel G. Cabell, praying for the allotment to him of one-third of certain cotton shipped to New York, per schooners E. J. Palmer and Potomac, and seized and held as Government property by the agent there, at the request of Mr. Cabell, in accordance with the stipulations of his appointment as "acting aid" by Assistant Special Agent Alexander.

In agreeing to give so large a portion of the cotton collected Mr. Alexander transcended his authority and violated his plain instructions, and the ratification of his action in the matter by the Department must depend very largely on the circumstances connected with the collection, care, and delivery of the property.

Inasmuch as Mr. Cabell fails to present to the Department any information in regard to any services performed or expenses incurred by him in connection with the lots in question, and furnishes no grounds for seizing the same, or why it can be held as Government property, I must for the present decline to make him any allowance whatever.

Respectively,

(Signed) H. McCULLOCH,
Secretary of the Treasury.

Hughes, Denver & Peck, Attorneys, Washington, D. C.

(Copy. A. B.)

VII.

WASHINGTON, D. C., *February 17th*, 1866.

Hon. Hugh McCulloch, Sec'y of Treasury.

SIR: In accordance with your letter of the 17th Nov'r last,
223 requesting me to return to my late field of operations in Florida and Southern Georgia, and to do all in my power to secure to the Government the cotton mentioned in my communication to you of Nov'r 16th last, I have now the honor to make the following report:

As will be seen by an official transcript of the books of the "custom-house," Jacksonville, Fla., collector's office, January 25th, 1866, and herewith submitted, marked "Exhibit A," I shipped on board the brig Lewis Clark one hundred and seventy-seven (177) bales of cotton, weighing ninety-two thousand one hundred and one (92,101) pounds; also shipped on board the schooner Queen of the West, ninety-five (95) bales of cotton, weighing forty-eight thousand three hundred and twenty-one (48,321) pounds, all of which cotton was marked "U. S.," and consigned by me to Simeon Draper, Esq., cotton agent, New York city.

The above-mentioned cotton which was seized by me, &c., was owned by the Exporting and Importing Company of Georgia (president, G. B. Lamar), a company engaged in the sole business of blockade running and holding said property for the purpose of aiding and abetting the rebellion, as stated in my communication to you of the 16th Nov. last.

Most of the cotton purchased for the above company in Florida and Southern Georgia was made by one who signs himself as "W. W. Cheever, agent for G. B. Lamar, as will more fully hereafter appear when reference is made to certain lots of cotton by me seized and shipped. It also appears that the said cotton was purchased by the agents of Mr. Lamar and left on the plantations subject to their order.

Part of the cotton seized and shipped by me to New York, as hereinbefore stated, was taken from Mr. Burton Bellamy, residing in Jefferson Co., Florida, about 14 miles from Station No. 4 on the Pensacola and Georgia R. R. On or about the 20th of Sept., 1865, I visited Mr. Bellamy's plantation and personally stated to him that I should hold him personally responsible for the safety and keeping of fifty-six (56) bales of cotton purchased from him by "W.
W. Cheever, ag't for G. B. Lamar." At the time of the
224 seizure of this cotton Mr. Bellamy informed me that the Importing and Exporting Co. or Mr. G. B. Lamar owed him $1,874.00 for storage, repairing, and putting in proper order, and also for transporting or hauling to the railroad two hundred and forty-seven (247) bales out of a lot of three hundred and four (304) bales purchased by the agent of the said Co. As Mr. Bellamy stated that he held the fifty-six (56) bales as security for the payment of his charges, and being convinced of the correctness of the same, I

paid the charges, as will be seen by receipt marked "Exhibit B." For information in regard to this matter I respectfully call your attention to my letter of the 10th and 13th Oct., 1865, marked Exhibits "C," "D," and also the reply of Mr. Bellamy of Oct. 12th, 1865, marked "Exhibit E." I also enclose a copy of letter, marked "Exhibit F," from Dunham and Palmer to G. B. Lamar, Savannah, and dated Dec. 5th, 1863, relative to the tax paid by them on the cotton purchased from B. W. Bellamy and Smith Simpkins.

After Mr. Bellamy had placed the fifty-six (56) bales of cotton in the possession of the P. and G. R. R. Co. at Station No. 4 it appears that he had retaken possession of twelve (12) bales, as the Imp't and Exp't'g Co. or G. B. Lamar owed him $1,874.00 (see my letter to Mr. Bellamy, Exhibit G), but subsequently the twelve (12) bales were again placed in the possession of the said railroad Co., as I paid Mr. Bellamy his charges, as heretofore stated, and again gave him a receipt for the whole of the fifty-six (56) bales, as per Exhibit H, but, by the carelessness and negligence of the railroad Co, all the said cotton was stolen while the same was in its possession. However, through the exertions of myself and assistants, I eventually recovered forty-two (42) bales. It is proper to state that Maj. Gen. Foster, com'd'g the dep't't of Florida, and also his ass't adj't gen., Mundee, rendered me essential and valuable assistance in the recovery of this amount. Twenty-seven (27) bales were taken from P. Moody, collector of customs, Jacksonville, Florida (see my statements as to this transaction), also that of Brevet Brig. Gen'l Mundee, marked "Exhibit I"; twelve (12) bales from Burton Bellamy, see Exhibit
225 J; one (1) bale from W. O. Hampton, see Exhibit K, also see Exhibit L, being the bond of W. O. Hampton for two (2) more bales of cotton, making in all forty-two (42) bales recovered. I also enclose a copy of my letter to Hampton, marked Exhibit "M."

In connection with the recovery of this cotton I paid out certain sums of money, as follows: A. J. Becket, $216.45; P. B. Brokan, $201.50, and to E. Cruell, $60.00, as per receipts marked Exhibits "N," "O," and "P;" also see two (2) letters of E. Cruell, marked "Exhibit Q."

In relation to my action with the railroad company *Co.* about the transportation, &c., of the above lot of fifty-six (56) bales of cotton, I herewith enclose a copy of my notice to the sup't, C. T. W. Syfan, Esq., dated October 10th, 1865, and marked "Exhibit R;" also *is* a copy of my letter to Maj. Gen. Foster, marked Exhibit T; also a copy of my letter to the pres't or sup't of the P. and G. R. R. Co., marked "Exhibit W," in which I stated that I should hold the company responsible for the missing fourteen (14) bales out of the lot of fifty-six (56) bales; also enclosed is the reply of my letter by Mr. C. T. W. Syfan, sup't P. and G. R. R. Co. (marked "Exhibit V"), to Major General Foster, to which letter of Mr. Syfan is attached an affidavit of one Willie Thomas.

When all the cotton which I seized was ready for shipment to New York, on board the schooner Queen of the West, ninety-five (95) bales, and the brig Lewis Clark, one hundred and seventy-seven (177) bales, the Pensacola and Georgia Railroad Company had charges

against the said cotton for transportation amounting in the aggregate to the sum of fourteen hundred and eighty-three dollars ($1,483.00), which amount I thought to be correct, but inasmuch as the railroad Co. had failed to deliver the fifty-six (56) bales of cotton as before stated, &c., &c., &c., I refused to pay the same. However, by some arrangement between the railroad Co. and the master or charter party of the schooner Queen of the West, the sum of three hundred and seventy-three dollars and fifty cents ($373.50) was charged up
226 against the said cotton for R. R. transportation and written on the margin of the bill of lading. Against the cotton shipped on the Lewis Clark the sum of eleven hundred and nine dollars and fifty cents ($1,109.50) was charged for railroad transportation and likewise written on the margin of the bill of lading.

The above item of charges was written on the margin of the bills of lading after the cotton was on board the vessels, and hence it was unnecessary for the master of the vessels or the charter party to allow such charges to be engrafted on said bills of lading.

I earnestly protested against it for the reason that I thought the railroad Co. (Pensacola and Georgia R. R.) owed the Government not only for the loss of fourteen (14) bales out of the lot of fifty-six (56) as before stated, but also for the expenses incurred by the Government (through me) in recovering the forty-two (42) bales. I beg leave to state that on the 25th day of Jan'y, 1866, I advised Mr. Simeon Draper, New York, of this transaction, and herewith enclose a copy of my letter, marked "Exhibit W."

In connection with the stealing of the fifty-six (56) bales of cotton from the railroad Co. I beg leave to state that by my efforts and also by the efficient and timely aid of Maj. Gen. Foster, I had eight (8) men placed in prison who were implicated in committing the theft, three of whom turned State's evidence, and were released under bonds to appear at the trial by the civil authorities. It is to be hoped that the parties implicated will be convicted.

I also beg leave to report that part of the cotton seized and shipped by me to New York, as hereinafter set forth, was taken from the plantation of Mr. Fred. B. Cotten, who resides in the city of Tallahassee, Florida. From Mr. Cotten I took one hundred and seventy-eight (178) bales of cotton, as per copy of receipt marked "Exhibit X," being twenty-eight (28) bales in excess of my report to you of Nov'r 16, 1865. This lot of cotton was seized by me in the month of September, 1865. It was purchased for the Importing and Exporting Co. by one P. S. Perkins, as subagent of G. B. Lamar, the president of the "Importing and Exporting Co." I herewith
227 enclose a copy of letter from W. W. Cheever, agent for "G. B. Lamar," dated Jan'y 11, 1863, and marked "Exhibit Y." I also herewith enclose a copy of my notice to Mr. Cotten, dated Oct. 12th, 1865, marked "Exhibit Z," to deliver said cotton to the Pensacola and Georgia R. R. Co.; also letter from Mr. Cotten to me, dated Oct, 16th, 1865, marked "Exhibit A A;" also one of no date, marked "Exhibit B B," in which letter he says that [he] wants an imperitive military order before the surrender is made of the so-called "Lamar cotton." Upon informing Maj. Gen'l Foster of the

contents of these letters, I was promptly furnished with a guard of U. S. soldiers to assist me. The cotton was stored on plantations of Mr. Cotten, situated about twelve (12) miles from Tallahassee, Fla. Upon examination I found that the cotton was not in condition for shipment. After rebaling the cotton and otherwise putting it in order, I had it hauled by wagons to Tallahassee, and from thence taken by railroad to Jacksonville, Fla. For expenses incurred by me in rebaling and hauling the above cotton (178 bales), I herewith submit receipt showing that I expended the sum of ten hundred and forty-three dollars and thirty-five cents ($1,043.35), as will be seen by the receipts marked "Exhibit C C," $144.00; "Exhibit D D," $180.55; "Exhibit E E," $124.80; "Exhibit F F," $60.00, and also a certified account marked "Exhibit G G," for $534.00.

I also beg leave to report that part and parcel of the cotton by me seized and shipped to New York, per vessels heretofore stated, was taken from the plantations of Mr. George A. Croom, situated about three (3) miles from Tallahassee, Fla., county of Leon. From Mr. Croom I took sixty-two hundred and sixty-two (6,262) pounds of cotton, and which was made into twelve (12) bales. A copy of my receipt to Mr. Croom, dated Dec. 19th, 1865, is submitted and marked "Exhibit H H." When I made my report to you in Nov'r last, I stated that Mr. Croom had fifteen (15) bales, but this was only estimated, as at that period the cotton was not baled nor was it ginned. Hence the discrepancy. This lot of cotton was also purchased for
228 the Importing and Exporting Co., of which G. B. Lamar was president, and W. W. Cheever, ag't for G. B. Lamar. See copy of letter (or *quasi*-contract) of Cheever to Croom, dated March 17th, 1863, marked "Exhibit I I;" also, see copy of notice served on Mr. Croom by me, dated Oct. 12th, 1865, and marked "Exhibit J J."

I also beg to report that part and parcel of the cotton by me seized and shipped to New York, per vessels heretofore stated, was taken from the "Parkhill Plantation," Leon Co., Fla., about ten (10) miles from Tallahassee, Fla., six (6) bales of cotton; from the "Baily Plantation," about forty-two (42) miles from Tallahassee, Florida, in Jefferson county, Fla., twenty-five (25) bales of cotton. Mr. Smith Simpkins was manager of both plantations. Mr. Simpkins informed me that in 1863 he sold to "W. W. Cheever, ag't for G. B. Lamar," the pres't of the Importing and Exporting Co., the following lots of cotton, viz:

From the Baily plantation, 25 bales.
" " Parkhill " 22 "

From the Baily plantation I recovered the whole twenty-five (25) bales; but from the Parkhill plantation I recovered but six (6) bales, as the remainder had rotted, &c., as will be seen by the affidavit of Andrew J. Becket, marked "Exhibit K K;" also see copy of notice to S. Simkins, marked "Exhibit L L;" also letter of S. Simpkins, marked "Exhibit M M;" also letter from me to S. Simpkins, marked "Exhibit N N" also receipt to Simpkins, marked "Exhibit O O" and "P P," for thirty-one (31) bales of cotton. The expenses incurred by me in obtaining this cotton amounted to the sum of two

hundred and forty-four dollars ($244.00), as will be seen by receipt of John H. Loper for $30.00, marked "Exhibit Q Q," and my certified account of $214.00, marked "Exhibit R R." In my report to you of November last I stated that I had seized sixty (60) bales of cotton then in possession of Smith Simpkins. Upon investigation, however, I became satisfied that twenty-seven (27) bales of the said cotton was the property of C. H. Smith (see Smith's affidavit, marked "Exhibit S S"). Maj. Gen. Foster fully approved of my action in this matter. It will, then, be seen that I had over-estimated
229 the quantity of cotton in possession of Smith Simpkins (manager of the Baily and Parkhill plantations) by only two (2) bales.

In my report of November last I stated that I had seized eight (8) bales of cotton in possession of Dan B. Maginnis, also sixteen (16) bales in possession of Rob't H. Gamble. The seizures were made upon the certificate of J. B. Oliver, "agent Produce Loan Office" of the late C. S. A. The said certificate is herewith submitted, marked "Exhibit T. T." Gen. Newton released this cotton, upon information from the Sec'y of the Treasury not to seize "tax-in-kind cotton." In connection with this matter I submit copies of Gen. Newton's orders, marked Exhibit "W W" and "V V;" also copies of affidavits of D. B. Magginnis and R. H. Gamble, marked Exhibit "W W" and "X X" respectively; also enclosed is a copy of my letter to Messrs. Gamble and Magginniss, dated Dec. 19th, 1865, and marked "Exhibit Y Y."

Early in September last I traced into Jacksonville, Fla., eleven (11) bales of cotton belonging to the Importing and Exporting Company. This cotton was placed in the warehouse of Jeffreys and Brothers, but fearing that I might have some trouble about obtaining it, Maj. Gen. Foster issued the enclosed order, marked "Exhibit Z Z;" also is a copy of my order to Joseph Remington to ship said cotton to New York, marked "Exhibit A A A;" also, copy of receipt for $58.75, paid Jeffreys & Brothers for their charges on said cotton, marked "Exhibit B B B."

Referring back to the period in October last when, through the influence of Governor Marion, Brig. Gen. Mundee sent me the letter or order (copy herewith submitted, marked "Exhibit C C C") "to stop all proceedings as to seizure or shipment of certain lots of cotton," and which letter or order referred to all the cotton by me seized and shipped to New York, viz., 272 bales, I deemed it proper, in order to protect the interests of the Government, to employ counsel learned and skilled in the law to procure evidence to be submitted to you that this cotton was the property of the Importing and Exporting Company. To the counsel so employed I paid D. P. Holland, Esq., the sum of one hundred and fifty dollars in gold
230 ($150.00), as per copy of his receipt, marked "Exhibit D D D;" also a copy of my certified account of the amount, viz., five hundred dollars ($500.00) in currency, paid to Judge O'Neil, herewith submitted, marked "Exhibit E E E." The evidence obtained by me through the services of these gentlemen was submitted to you

by Maj. Gen. Foster in his letter to you of October 29, 1865, a copy of which is herewith submitted, marked "Exhibit F F F."

I also herewith submit a copy of my receipt, marked "Exhibit G G G," to Joseph Remington for the loss of two (2) bales of Government cotton, which I had seized and had stored with him. The receipt is for four hundred and twelve dollars and eighty cents ($412.80). In taking this amount of money from Remington for the loss of the said cotton, I think the Government received its full value.

It will thus be seen from the papers submitted that I have been engaged since July last in seizing and otherwise obtaining this two hundred and seventy-two (272) bales of cotton for the Government. It will also be observed that I have incurred an expense of $7,066,80 (see Exhibit H H H) before the cotton was shipped to New York, but subtracting the amount in cash received from Remington reduces the actual cash expended to $6,654.00.

As compensation for my services, relative to this lot of two hundred and seventy-two bales of cotton, I now respectfully request that I be furnished by you with an order on Simeon Draper, New York, for one-third or ninety and two-thirds (90⅔) bales of said cotton.

I have the honor to be, very respectfully, your obedient servant,

S. G. CABELL,
Act. Ag't Tre's. Dep't.

(Indorsed:) Report of S. G. Cabell, February 17th, 1866, rel. to his operations in Florida and Georgia.

231 (Copy. A. B.)

VIII.

Abstract of Expenditures and Receipts, Accompanied with Copies of Vouchers or "Exhibits" of S. G. Cabell, Acting Agent Treasury Department, Incurred Relative to Two Hundred and Seventy-two (272) *Bales of Cotton Shipped to S. Draper, New York.*

	To whom.	Exhibits.	Amount.
Cash paid	Burton Bellamy	B	1,874 00
" "	A. J. Becket	N	216 45
" "	P. B. Brokau	O	201 50
" "	E. Cruell	P	60 00
" "	W. D. Bloxham	C C	144 00
" "	G. H. Maginnis	D D	180 55
" "	A. Hopkins	E E	124 80
" "	G. C. Townsend	F F	60 00
" "	S. G. Cabell (certified acc't)	G G	534 00
" "	John H. Loper	Q Q	30 00
" "	S. G. Cabell (certified acc't)	R R	214 00
" "	Jeffreys & Brother	B B B	58 75
" "	D. P. Holland (in gold)	D D D	150 00
" "	Judge O'Neil	E E E	500 00

"	"	E. J. Young	G A B	107 75
"	"	Seward & Wright	G A C	25 00
"	"	J. L. McGoffin	G A D	500 00
"	"	S. G. Cabell (certified acc't)	G A E	2,086 00
				7,066 80
Cash rec'd from J. Remmington			G G G	412 80
Am't cash paid out				$6,654 00

(Indorsed:) Exhibits H H H. Abstract of expenditures and receipts of S. G. Cabell, act. agent Treasury Dep't, relative to two hundred and seventy-two (272) bales cotton shipped to S. Draper, New York.

232 (Copy. A. B.)

IX.

In the Matter of Compensation Claimed by S. G. Cabell, Acting Aid to Assistant Special Treasury Agent, 9th Special Agency.

FEBRUARY 27TH, 1866.

The petition of S. G. Cabell, a loyal citizen of the United States, and a resident of Quincy, Adams county, Illinois, represents that J. H. Alexander, then acting assistant supervising special agent of the United States Treasury Dep't for the ninth (9) special agency, under the regulations of said Department, for the collection of captured and abandoned property in the disloyal States, on the twenty-second (22d) day of July, 1865, appointed your petitioner acting aid to ass't special Treasury agent for the district of Florida, to collect and receive all the cotton, tobacco, and other property belonging to the United States; a copy of which appointment is hereto submitted, marked "Exhibit A." And on the same day the said Alexander gave your petitioner instructions in writing, a copy of which are herewith submitted, marked "Exhibit B."

Your petitioner further represents that on the 29th day of July, 1865, he presented to the A. A. A. Gen'l, "h'dq'rs milit'y forces at Tallahassee," his commission, &c., and asked for recognition and military assistance to enable him to stop the shipment of a large quantity of Gov't cotton which was being shipped from Tallahassee by one Thomas Douglas, who represented himself as agent for shipping Gov't cotton to R. Ottman, who was reputed a Treasury agent, at Jacksonville, Fla.; that your petitioner urged upon the A. A. A. Gen'l that the cotton being removed by the said Douglas was improper and unauthorized; that it was being taken from your petitioner's dist. and should of right be under his sole control, but that said A. A. A. Gen'l informed your petitioner that the general com'd'g was then absent and would not return for some ten (10) days;
233 that the business was not in his regular routine of duty, and that, under the circumstances, he preferred not to act until the gen'l com'd'g should return.

Your petitioner further states that he then called upon L't Col. John Wilder, com'd'g, &c., and to him exhibited his commission, and of and from him asked permission and assistance to restrain the said Douglas from shipping cotton, &c., &c., from your petitioner's dist.; that the said L't Col. declined to act in the premises, preferring to await the return of the gen'l com'd'g. Your petitioner also called upon the commandant of the post, but he declined to act in the absence of the gen'l com'd'g, whereupon your petitioner again protested to the said Douglas against removing any cotton from the said dist., but the said Douglas disregarded said protest. Your petitioner also telegraphed to Mr. Ottman. (See copy herewith submitted, marked "Exhibit C," and also his reply, marked "Exhibit D."

Upon the return of the gen'l com'd'g (August 11th, 1865), he issued an order (copy herewith, marked "Exhibit E,") giving to your petitioner the exclusive privilege of shipping cotton as per his commission and instructions, and immediately thereafter the said Douglas came to your petitioner and voluntarily admitted that the said Ottman (in his opinion) had no right or authority to remove cotton, &c., from the said dist., and thereupon the said Douglas informed your petitioner that two hundred and sixty-eight (268) bales of cotton had been shipped by him to the said Ottman, and that the said Ottman had not paid the expenses incurred in preparing the said cotton for shipment; whereupon your petitioner paid all of said expenses, amounting to the sum of $6,883.89, as will be seen by copies of receipts submitted, and marked Exhibits from F to N, and at the same time wrote to Simeon Draper, N. Y. city, (see copy of letter marked "Exhibit O,") to "suspend any accounts with him (Ottman) until both parties can be represented," &c. Also, see copy of Thomas Douglas's affidavit in regard to the whole transaction, herewith submitted, marked "Exhibit P;" also enclosed are copies of my
234 letters to Mr. Ottman, dated August 16th and 17th, 1865, and marked Exhibits "Q" and "R," respectively.

Your petitioner therefore prays that he be paid the amount expended by *by* him relative to this cotton, viz., $6,883.89, and that he be allowed a liberal and just compensation for his services in the matter.

Respectfully submitted.

S. G. CABELL.

(Indorsed:) Petition of S. G. Cabell. February 27, 1866. Rel. to 268 B. C. shipped from Jacksonville, Fla. For compensation for services. M'rk f'ms. C, 723, Feb'y 28, 1866.

(Copy. A. B.)

X.

Abstract of Expenditures, Accompanied with Vouchers or Receipt of S. G. Cabell, Acting Agent Treasury Department, incurred relative to Two Hundred and Sixty-eight (268) *Bales of Cotton shipped to S. Draper, New York.*

	Paid to.	Exhibits.	Amount
Cash paid	Thomas Douglas	F	$107 50
" "	W. M. Ledwith	F F	1,729 56
" "	Thomas Douglas	G	19 13
" "	W. D. Bloxham	G G	201 00
" "	William Monroe	H	425 15
" "	Thomas Douglas	H H	702 75
" "	Thomas Douglas	I	144 75
" "	R. C. Shorter	I I	3,164 30
" "	Heir & Coles	J	32 30
" "	Thomas Douglas	K	161 50
" "	A. Hopkins	L	87 20
" "	A. Gallee	M	52 50
" "	Thomas Douglas	N	56 25
			$6,883 89

Shipped by Reuben Ottman in August, 1865.

(Indorsed:) Abstract of expenditures of S. G. Cabell, relative to two hundred and sixty-eight (268) bales of cotton shipped to New York to S. Draper. $6,883.89.

235

(Copy. A. B.)

XI.

United States Cotton Sale at No. 112 *Pearl Street, New York, September* 12*th*, 1866.

Sold at auction per order of Simeon Draper, U. S. cotton agent, from Jacksonville (by S. J. Cabell), by John H. Draper & Co., auctioneers, No. 112 Pearl St., (Hanover square), 177 bales cotton:

4 bales	strictly middling,	1,247 lbs.,	@	35¼	$792 07
12 "	low middling,	6,591 "		31½	2,076 17
25 "	good ordinary,	12,545 "		29¼	3,669 41
36 "	ordinary,	17,877 "		27½	4,916 18
8 "	pickings,	3,667 "		19¾	724 23
92 "	rebaled,	45,026 "		27	12,157 02
					$24,335 08

Charges.

Freight	$3,288 24	
Lighterage	72 24	
Storage & labor	398 25	
Classing & sampling	44 25	
Weighing	26 55	
Insurance	1,001 89	
Advertising & catalogues	35 65	
Commission	121 67	
		4,988 50
		$19,346 58

E. & O. E. JNO. H. DRAPER & CO.
TOOTHEY.

(Indorsed:) John H. Draper & Co. Sale of 177 bales cotton from S. J. Cabell, Jacksonville. Sept. 12, 1866. $19,346.58.

236 (Copy. A. B.)

XII.

United States Cotton Sale, at No. 112 *Pearl Street, New York, September* 12*th*, 1866.

Sold at auction, per order of Simeon Draper, U. S. cotton agent, from Jacksonville (by S. J. Cabell), by John H. Draper & Co., auctioneers, No. 112 Pearl street, (Hanover square), 95 bales cotton:

4	bales	low middling,	1,875	lbs., at	31½ c.	590 62
17	"	good ordinary,	7,779	"	29¼	2,275 36
11	"	ordinary,	5,251	"	27½	1,444 02
4	"	pickings,	1,902	"	19¾	375 65
59	"	rebaled,	27,899	"	27	7,537 73
						12,218 38

Charges.

Freight	1,749 61	
Lighterage	38 61	
Storage and labor	213 75	
Classing & sampling	23 75	
Weighing	14 25	
Insurance	531 01	
Advertising & catalogues	19 13	
Commission	183 27	
		2,772 77
		$9,445 61

E. & O. E. JNO. H. DRAPER & CO.
TOOHEY.

(Indorsed:) John H. Draper & Co. Sale of 95 bales of cotton from S. J. Cabell, Jacksonville. Sept. 12th, 1866. $9,445.61.

237 (Copy. A. B.)

XIII.

MAY 4, 1866.

SIR: Application is made to me by S. J. Cabell, Esq., for the allowance to him of a portion of certain two hundred and seventy-two (272) bales of cotton collected by him, and shipped to you from Jacksonville, Fla., on the 25th of January last, and for a portion also of certain two hundred and sixty-eight (268) bales alleged to have been collected by him and turned over or shipped to Reuben Ottman, Esq., assistant special agent at Jacksonville, Fla.

I am not at present prepared to make a division of either lot, but it appearing to my satisfaction that Mr. Cabell has paid, as expenses incidental to securing the first lot, the sum of six thousand six hundred and fifty-four dollars ($6,654), and on the second the sum of six thousand eight hundred and eighty-three dollars and eighty-nine cents ($6,883.89), which amounts should probably be reimbursed, you are hereby authorized and directed to pay to his attorneys, Messrs. Hughes, Denver & Peck, the two amounts named, charging the first as an item of expense against the two hundred and seventy-two bales above referred to, and the second as a similar item against the shipment of cotton received by you from Mr. Ottman, at Jacksonville.

Mr. Cabell also asks a per diem allowance as a compensation for his time, personal services, and expenses in connection with the cotton named; for this purpose you are also authorized and instructed to pay his attorneys, Messrs. Hughes, Denver & Peck, the sum of three hundred and fifty dollars ($350), being at the rate of five dollars ($5) per day from the 17th of Nov. last, the date of my letter authorizing him to take action in the premises, to the 25th of January, the date of the shipment by him of the two hundred and seventy-two (272) bales mentioned, from Jacksonville, making a charge of this amount, also, as an item of expense against the two hundred and seventy-two (272) bales.

These several sums should be charged against Mr. Cabell on
238 your books, and will be deducted from any portion of cotton hereafter allotted, or any allowance made to him on a final settlement of his claims.

You will, of course, require proper receipts for the money thus paid, and promptly report your action hereunder to the Department.

Very respectfully,

H. M'CULLOCH,
Secretary of the Treasury.

Simeon Draper, Esq., U. S. Cotton Agent, New York.

XIV.

$13,887.89. WASHINGTON, D. C., *May 5th*, 1866.

At sight —— pay to the order of S. G. Cabell thirteen thousand

eight hundred and eighty-seven $\frac{89}{100}$ dollars, value received, and charge the same to account of—

HUGHES, DENVER & PECK.

To Simeon Draper,
U. S. Cotton Agent, No. ——, New York.

Correct. See Secretary's letter dated May 4, '66.

F. R.

(Written across the face:) Paid.

[5-ct. int. rev. stamp. C. N. B., 2, 7, '66.]

(Endorsement:) S. Cabell. Pay Croton Nat'l B'k, or order, for collection, acc't of National Bank of the Metropolis. A. S. Pressel, A. C. Paid at the Croton Nat'l Bank.

239 (Copy. A. B.)

XV.

UNITED STATES COTTON AGENCY,
CUSTOM-HOUSE, NEW YORK,
NEW YORK, *May 7th*, 1866.

SIR: I have received your letter of the 4th instant, with instructions to pay Messrs. Hughes, Den*on* & Peck the following sums on account of expenses on certain cottons shipped from Jacksonville, viz. ---------- $6,654 00

6,883 89

Compensation to S. G. Capell---------- 350 00

$13,887 89

I have this day paid a draft made by the above parties in favor of Mr. Cabell for thirteeen thousand eight hundred eighty-seven $\frac{89}{100}$ dollars, and have made the charges as directed, referring to your letter by date as my voucher for such payment in the final settlement of my account.

I notice a discrepancy in the quantity of cotton referred to in your letter as having been shipped by Cabell, the number of bales actually received being two hundred and seventy-four (274), instead of two hundred and seventy-two (272).

Very respectfully, your ob't se't,

S. DRAPER,
U. S. Cotton Agent.

Hon. H. McCulloch,
Secretary of the Treasury, Washington, D. C.

(Indorsed:) S. Draper, U. S. cotton ag't. May 7, '66. In relation to payment of $13,887.89 to Hughes, Denon & Peck, for account of S. G. Cabell. Mr. Kfay. D. 808. May 8, '66.

240 (Copy. A. B.)

XVI.

MAY 25, '7.

SIR: In compliance with the promise made to him in my letter of November 17th, 1865, I have decided to pay to Mr. Samuel G. Cabell, as full compensation for information furnished, services performed and expenses incurred by him in the collection, putting in order and shipment to New York of certain 272 and 268 bales of cotton, ea., brig Lewis Clark, and schooners Queen of the West, Julia Crawford, and R. E. Pecker, etc., and for information furnished and expenses incurred by him touching the cottons captured at Thomasville, Ga., and other cottons claimed by the Georgia Exporting and Importing Company, or by G. B. Lamar, and held by Government as captured or abandoned property, the sum of four thousand eight hundred and eighty-one dollars and ten cents ($4,881.10.)

You will, therefore, please issue your requisition upon F. E. Spinner, Esq., Treasurer, U. S., special agent, the same to be satisfied out of any funds in his hands as proceeds of captured and abandoned property for the amount named, viz., $4,881.10, in favor of George Peabody Este, whose full power of attorney to act in the premises is on file in this office.

The draft, therefore, when issued, should be handed to Mr. S. H. Kauffmann, a clerk in this office, for delivery to the payee, under such instructions relative thereto as he may have or receive.

Very respectfully, H. M'CULLOCH,
Secretary of the Treasury.

Nathan Sargent, Esq're, Commissioner of Customs.

241 (Copy. A. B.)

XVII.

S. G. Cabell's Claim. Basis of Settlement.

272 bales, gross value (at N. Y. or J.)		$36,553 46
¼ of which to Cabell is		$9,138 36
Deduct expenses refunded him	$6,654 00	
" ¼ " to and at N. Y.	1,940 31	
		8,594 31
Balance due Cabell		$544 05
268 bales, gross value (at N. Y. or J.)		$44,910 56
¼ of which to Cabell is		11,227 64
Deduct expenses refunded him	$6,883 89	
" ¼ of " to and at N. Y.	506 70	
		7,390 59
Balance due Cabell		$3,837 05

For services, information, expenses, etc., in relation to lation to the Thomasville and other cottons claimed by Lamar	$500 00

Recapitulation.

On the 272-bale lot	$544 05
" 268 " "	3,837 05
" Thomasville "	500 00
Whole am't paid	$4,881 10

See letter to commissioner of customs, May 25, 1867.

(Indorsed:) Cabell claim. Basis of settlement.

242 (Copy. A. B.)

XVIII.

Know all men by these presents that I, Samuel G. Cabel, of the State of Illinois, have this day made, constituted, and appointed, and by these presents do hereby make, constitute, and appoint, George Peabody Este, of the city of Washington, District of Columbia, my true and lawful attorney, for me and in my name to collect and receive all such sums of money from the United States Treasury Department, or its authorized agents, which are due and payable to me, or which may be awarded me by the Hon. Hugh McCulloch, as Secretary of the Treasury, on account and by virtue of my having served as aid to *be* assistant special agent of the Treasury Department in the State of Florida and adjoining counties of the State of Georgia, in and during the years A. D. eighteen hundred and sixty-five and eighteen hundred and sixty-six.

And for the purposes aforesaid giving and granting to my said attorney full power and authority to do all acts and sign in my name all receipts necessary to be done in the premises, or that, in the judgment of my said attorney may seem proper to be done, in as full and ample a manner as I might or could do if personally present. And I do hereby ratify and confirm all the acts of my said attorney carefully done as aforesaid in the premises; and I do hereby revoke and cancel any and all power of attorney previously executed by me inconsistent or antagonistic to this my power of attorney to said George Peabody Este.

In witness whereof, I have hereunto set my hand and affixed my seal, this sixth day of April, A. D. 1867.

[SEAL.] S. B. CABELL.

Signed & sealed in presence of—
GEO. P. ESTE.
H. S. COMMAGER.

[50-cent. stamp. 6th Apr. '67, S. G. C.]

243 DISTRICT OF COLUMBIA, } ss:
City of Washington, }

On this 6th day of April, A. D. 1867, before the undersigned, a notary public in and for said District, personally came Samuel G. Cabel, personally known to me, the constituent in the foregoing power of attorney, and acknowledged the signing and sealing thereof to be his voluntary act and deed.

In witness whereof, I have hereunto subscribed my name and affixed my seal, this 6th day of April, A. D. 1867.

S. G. CABELL.

Subscribed and acknowledged before me, on the 6th day of April, 1867, at the city of Washington, D. C.

JAMES H. CAUSTEN,
Notary Public.

[5-ct. int. rev. stamp. Apr. 6th. J. H. C.]

(Indorsed:) S. G. Cabell. Power of attorney to Geo. P. Este. April 6, 1867.

(Copy. A. B.)

XIX.

$4,881.10. WASHINGTON, *May* 27, 1867.

Received from Hugh McCulloch, Secretary of the Treasury, draft No. 235 of F. E. Spinner, Treasurer, U. S. special agent, on the Treasurer of the United States at Washington, for the sum of four thousand eight hundred and eighty-one dollars and ten cents ($4,881.10), which amount is received and accepted by me as full compensation for all information furnished, services performed, or expenses incurred by me or those acting under or with me, in relation to any and all cotton which has or which may hereafter come into the possession of the Treasury Department, in relation to which I have or might or may set up any claim. And I hereby agree
244 and bind myself to hold harmless the Government of the United States and all its officers and agents against all claims, suits, or proceedings of any kind whatsoever, on account of the sum of money so paid me, or the cotton whence the same was derived.

S. G. CABELL,
Per GEO. PEABODY ESTE,
His Attorney-in-Fact, though not to ——.

XX.

No. 235, M. C. B.] TREASURER'S OFFICE,
$4,881.10.] WASHINGTON, *May 27th*, 1867.

Pay to the order of George Peabody Este, att'y for Sam'l G. Cabell, four thousand eight hundred and eighty-one $\frac{10}{100}$ dollars, and charge to account of—

F. E. SPINNER,
Treasurer, U. S. Special Agent.

To Treasurer U. S., Washington, D. C.

(Endorsed:) Geo. Peabody Este, attorney for S. G. Cabell.

(Copy. A. B.)

XXI.

UNITED STATES COTTON AGENCY,
CUSTOM HOUSE, NEW YORK,
NEW YORK, *May 30th*, 1867.

SIR: I have this day received your letter of the 27th instant relative to expenses on shipment of 272 b. cotton, received from S. G. Cabell, sp'l agent, &c., from Jacksonville, Fla., and enclose herewith copies of the b. ladings of said shipments, upon which you will find the amount mentioned in your letter, viz., $50,373.51, endorsed as accrued expenses before shipment, and which it was necessary to pay here upon delivery of the cotton.

245 The vouchers for disbursements at Jacksonville have never been forwarded to this agency, and the amount indicated on the b. l's was receipted for by the consignees of the vessel, which vouchers are only a recapitulation of the charges on the same, and *same and* give no further information as to the character of the charges.

This matter has been the subject of frequent correspondence with the Department, and accrued expenses on shipments have been paid here in accordance with its instructions, it being necessary in order to obtain possession of the cotton, and the agent shipping should be accountable for such disbursements.

Very respectfully, your ob't s'v't,

FR'S ROBINSON,
Sp'l Agt., &c.

Hon. H. McCulloch,
Secretary of the Treasury, Washington, D. C.

(Indorsed:) Fr's Robinson, sp'l ag't, May 30, '67. In relation to charges on 272 b. cotton, on c. from S. G. Cabell, Jacksonville, and enclosing copies of b. ladings. Mr. Kfmry, R. 570. May 31, 1867.

(Copy.)

[VIGNETTE.]

U. S.

95 bales cotton, 48,321 lbs., expenses, wh'f'ge, storage, weighing, etc.—84 B. C. *a* 1.15	$96 60
Repairing bagging, 95 bales, *a* 1.50	142 50
Wh'f'ge & storage, 11 bales, 3⅝ monshs, *a* 25c.	16 50
I. O. Sammis & Co.'s bill, expenses on 17 b.	174 20
P. Moody's bill, expenses on 10 b., *a* $5.65	56 50
Insurance on $10,000 worth *a* 1½ cents premium	150
	$636 30

Shipped, in good order and well conditioned, by Joseph Remington, on board the schooner called the Queen of the West, whereof —— is master, now lying in the port of Jacksonville, and bound for New York, to say, ninety-five (95) square b. cotton, 48,321 lbs., more or less, wet & country damaged, not accountable for cotton ropes & bagging, weights & contents unknown. Expenses ($1,009.80) one thousand & nine $\frac{80}{100}$ dollars, and freight as below, for account of S. G. Cabell, Treasury ag't, being marked and num-

246	R. R. transportation on 59 bales	373 50
		$1,009 80
	Insurance on $1,009.80 *a* 1½ per cent.	15 00
		$1,024 80
	Freight paid in New York	724 81
		$1,749 61

bered as in the margin, and are to be delivered in the like good order and condition at the port of New York (the dangers of the seas only excepted), unto Simeon Draper, cotton agent, or to his assigns, he or they paying freight for the said cotton one cent and a half per pound, without primage and average accustomed. In witness whereof, the master or purser of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Jacksonville the 25th day of January, 1866.

(Signed) JOHN A. ROGERS.

Correct. F. R.

(Copy.)

[VIGNETTE.]

U. S.

12 bales (sq'r) S. I.		5,962 lbs.
165 " " upland		86,139 "
177		92,101 lbs.

Expenses.

R. R. transportation, 177 bales	$1,109 50
Wh'f'ge, storage, weighing, etc. *a* 1.15	203 55
Repairing bagging, etc.	265 50
Insurance on $20,000.00 worth, *a* 1½ per cent.	300 00
	$1,878 55
Insurance on advances	28 18
Freight	1,381 51
	$3,288 24

Shipped, in good order and well conditioned, by Joseph Remington, on board the brig called the Lewis Clark, whereof —— is master, now lying in the port of Jacksonville, and bound for New York,

To say:

Twelve square bales S. I. cotton 5,962 lbs.

One hundred and sixty-five (165) square bales, U. 86,139 " more or less, wet or country-damaged, not accountable for rotton rope & bagging. Weight and contents unknown.

For account S. G. Cabell, Treasury agent, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York (the dangers of the seas only excepted), unto Simeon Draper, cotton agent, or to his assigns, he or they paying freight for the said cotton one & a half cents per pound, charges as per margin, with primage and average accustomed.

In witness whereof, the master or purser of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Jacksonville, the 20th day of January, 1866.

(Signed) JAS. B. BARTLETT.

Correct. F. R.

247 The plaintiff's counsel then read in evidence a Treasury circular issued June 27th, 1865, entitled "Circular letter of instructions to officers of the Treasury Department relative to commercial intercourse, captured, abandoned, and confiscated property, freedmen, etc. Signed by H. McCulloch, Secretary of the Treasury.

The plaintiff's counsel then called and examined as a witness WILLIAM C. LUSK, as follows:

By Mr. CURTIS:

Q. Where do you reside?
A. In Brooklyn.
Q. What is your business?
A. I am business manager of the Shipping and Commercial List. It is a commercial paper.
Q. Is that the full title of that publication?
A. No, sir; it is the Shipping and Commercial List and New York Price Current.
Q. What is your connection with it?
A. Business manager.
Q. Where is the office of that publication?
A. It is now at 63 Pine street.
Q. What is it? Is it a newspaper?
248 A. It is a semi-weekly newspaper.
Q. Giving the price current of merchandise?
A. Of nearly all kinds of merchandise.
Q. How long has it been established?
A. I do not know; it says since 1795.
Q. How long have you been connected with it?
A. For eight years. We have bound files from as far back as 1812.
Q. I wish to ask you whether you have, at my request, examined the files of that Price Current for the purpose of ascertaining the market price of cotton in thos- port- in this city in the months of September, October, and November, 1865?

Mr. CLARKE: I object. It does not appear that the cotton was in this city at that time. It came here later. The time that the counsel applies his question to is not the time when the cotton was in this city, according to any of the evidence in this case.

Mr. CURTIS: But it had been seized in Florida.

Mr. CLARKE: Then I suppose that the value in Florida at the time of the seizure is to be taken, and not its value in New York.

249 Mr. CURTIS: I want to show what the value in New York was by way of confirming our witnesses as to what the value was in Florida.

Question allowed. Exception by defendant.

Mr. CLARKE: We do not propose to put in any evidence on this subject; we want, therefore, to see that the evidence that they put in is competent.

Mr. CURTIS: If the gentleman wants to object to the source of the evidence let him say so.

The COURT: I suppose they only object to the evidence because it is of the price in the New York market rather than in the Tallahassee market.

Mr. CURTIS: The very thing that I want to prove is the price in New York; I am going to make use of it by-and-by.

Q. Now, will you state if you have examined the Price Current and can state what was the price of upland cotton in the city of New York in September, 1865?

A. It ranged from forty-two to forty-four and a half cents.

Q. How was it in October, 1865?

A. From forty-five and a half to sixty.

Q. And in November?

A. From fifty to fifty-six.

Q. What was it in September, 1866?

250 A. From thirty-three to thirty-eight and one-half.

Q. And in November, 1866?

A. From thirty-four to thirty-nine.

Q. Is this publication, the Shipping and Commercial List and New York Price Current, sold like any other newspaper to the merchants of the city?

A. Yes.

Q. And goes all over the United States?

A. All over the world.

No cross-examination.

The plaintiff's counsel then read in evidence the following questions and answers from the deposition of Hugh McCulloch, the defendant, taken in this action by the defendant's counsel:

By the DEFENDANT'S COUNSEL: Q. Mr. McCulloch, will you please give your places of residence, beginning in January, 1864, and ending in January, 1874?

A. I became Secretary of the Treasury in March, 1865, and retained that position until March, 1869; in the autumn of 1870 I went to London; until I went to London my dwelling was in the District of Columbia.

251–2 Q. Were you in London from 1870 to 1874; that is, did you dwell in that city?

A. I remained in London until the autumn of 1873; I came to New York on a visit in September, 1873.

Q. Did you go back to London then?

A. I think in the January following; I went back after two or three months.

Q. At any time between 1864 and 1874 did you dwell or reside in the city of New York?

A. No, sir; I did not.

Cross-examined by Mr. CURTIS:

Q. In what State did you reside before you became Secretary of the Treasury, in 1865?

A. I had been living two years in Washington, performing the duties of Comptroller of the Currency. Previous to that time my residence had been in the State of Indiana.

And thereupon the plaintiff's counsel rested his case.

The defendant's counsel then moved the court to direct the jury to return a verdict for the defendant on the plaintiff's proofs.

253 "That the taking by Cabell was lawful, because it was a capture; that the taking was lawful, because the property was abandoned; that the action of the defendant was such as does not subject him to an action for damages, because, under the general principles of law, the capture or taking was one for which there is a remedy only by application to the sovereign; that the defendant is not liable, because he was acting in the exercise of his discretion as a public officer; that whatever the defendant did was done by virtue of or under color of the captured and abandoned property acts, and he is protected by them, by the two years' limitation statute, by the act of 1868, and by the original intent of those acts.

254 And after hearing the defendant's counsel in support of his motion, and the counsel for the plaintiff in opposition thereto, and the counsel for the defendant in reply, the court directed the jury to find a verdict for the defendant, upon the ground that the Court of Claims had exclusive jurisdiction of the cause of action set forth in the plaintiff's declaration and in the evidence, as given thereunder, by virtue of the statute of March 12th, 1863, and the statutes passed amendatory thereof, and before the rendering and recording of the verdict, Mr. Curtis, of counsel for the plaintiff, excepted to the ruling of the court in directing the jury to find a verdict for the defendant.

And thereupon the jury found a verdict for the defendant, which was entered on the minutes of the court; and, on motion of Mr. Curtis, it was ordered that the plaintiff have a stay of proceedings on said verdict for forty-five days, within which to prepare and serve a bill of exceptions therein.

255 And forasmuch as the exceptions, matters, and things aforesaid would not otherwise appear by the record, I have set my hand to this bill of exceptions, which is hereby allowed, and it is ordered that this bill of exceptions be filed as a part of the record with like force and effect as if it had been made up in form, signed, and placed before the case was given to the jury; and it is further ordered that at any time before the entry of judgment the plaintiffs may have leave to move for a new trial upon this bill of exceptions as upon a case made and settled.

Witness my hand, this 26th day of Jan'y, 1885.

N. SHIPMAN, *Judge.* [L. S.]

256 Supreme Court of the United States.

G. DE ROSSET LAMAR, as Executor, &c., Plaintiff in Error,

vs.

HUGH MCCULLOCH, Defendant in Error.

Afterwards, to wit, on the second Monday of October, 1885, in

this same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said G. De Rosset Lamar, executor, plaintiff in error, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. That the court erred in overruling the several exceptions, noted in the record herein, on behalf of the plaintiff, to the admission or rejection of evidence, whereas the said court should have severally sustained said exceptions, and the plaintiff assigns said several rulings of the court as separate errors.

2. That the court erred in directing the jury to find a ver-
257 dict for the defendant upon the ground that the Court of Claims had exclusive jurisdiction of the cause of action set forth in the plaintiff's declaration and in the evidence as given thereunder, by virtue of the statute of March 12th, 1863, and the statutes passed amendatory thereof, whereas said direction was contrary to the law.

3. That the court erred in overruling the exception of counsel for the plaintiff to the ruling of the court in directing the jury to find a verdict for the defendant, whereas said ruling was contrary to the law, and said exception should have been sustained.

4. That by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid
258 for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that the said plaintiff may be restored to all things which he has lost by occasion of said judgment.

GEORGE TICKNOR CURTIS,
For Plaintiff in Error.

(Endorsed:) Supreme Court of the United States. G. De Rosset Lamar, executor, etc., plaintiff in error, *vs.* Hugh McCulloch, defendant in error. Assignment of errors. Geo. Ticknor Curtis, counsel for pl'ff. Service of a copy of the within is admitted this 13th day of Feb., 1885. Elihu Root, U. S. att'y, att'y for def't in error. U. S. circuit court. Filed Feb. 13, 1885. Timothy Griffith, clerk.

259 United States Supreme Court.

G. DE ROSSET LAMAR, as Ex'r, &c., Pl'ff in Error,
v.
HUGH MCCULLOCH, Def't in Error.

And afterwards, to wit, on the second Monday of October, 1885, the said defendant in error, by Elihu Root, his attorney, comes here into court and says that there is no error, either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices

thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

ELIHU ROOT,
United States Attorney, Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. G. De Rosset Lamar,
260 as ex'r, &c., pl'ff in error, *v.* Hugh McCulloch, def't in error. Joinder in error. Elihu Root, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. Geo. Ticknor Curtis, for plaintiff in error. New York, Feb'y 13th, 1885. U. S. circuit court. Filed Feb. 13, 1885. Timothy Griffith, clerk.

260½ Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Bond for Damages and Costs.

G. DE ROSSET LAMAR, Executor of the last will and testament of Gazaway B. Lamar, deceased,
vs.
HUGH MCCULLOCH.

Know all men by these presents, that we, G. De Rosset Lamar, of the city of New York, in the State of New York, as principal, and William K. Soutter, of the same city and State, as surety, are held and firmly bound unto the above-named Hugh McCulloch in the sum of two hundred and fifty dollars, to be paid to the said Hugh McCulloch, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourth day of February, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas the above named G. De Rosset Lamar, as executor, has prosecuted his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named G. De Rosset Lamar, executor, shall prosecute his writ of error to effect and answer all damages and costs if he shall fail to make his plea good *good*, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

G. DE ROSSET LAMAR, [L. S.]
Executor.
WILLIAM K. SOUTTER. [L. S.]

Sealed and delivered, and taken and acknowledged, this fourth day of February, 1885, before me—

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

260¾ UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

William K. Soutter, of the city of New York, in the State of New York, being duly sworn, deposes and says: That he is a householder in said city and a freeholder in said State, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WILLIAM K. SOUTTER.

Sworn to this fourth day of February, A. D. 1885, before me—

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Endorsed: Vol. —, page —. U. S. circuit court. G. De Rosset Lamar, executor, plaintiff, *vs.* Hugh McCulloch, defendant. Damages and bond for costs on writ of error. ———, proctor. Bond approved as to form and sufficiency of security. Feb'y 13th, 1885. Wm. J. Wallace. Filed this — day of ——, 18—. U. S. circuit court. Filed Feb'y 13, 1885. Timothy Griffith, clerk.

261 UNITED STATES OF AMERICA, *ss:*

To Hugh McCulloch, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ or error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein G. De Rosset Lamar, as executor of the last will and testament of Gazaway B. Lamar, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated Fe'y 13th, 1885.

WM. J. WALLACE,
Circuit Judge.

262 [Endorsed:] U. S. Supreme Court. G. De Rosset Lamar, as executor, plaintiff in error, against Hugh McCulloch, defendant in error. Citation. Service of a copy of the within is admitted this 13th day of Feb., 1885. Elihu Root, K., U. S. att'y, att'y for def't in error. U. S. circuit court. Filed Feb. 13, 1885. Timothy Griffith, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 828. G. De Rosset Lamar, executor of Gazaway B. Lamar, deceased, plaintiff in error, *vs.* Hugh McCulloch. Filed 24th February, 1885.

Office Supreme Court U. S.
FILED.
OCT 3 1885
JAMES H. McKENNEY.
CLERK.

116-163

In the Supreme Court of the United States.

G. DE ROSSETT LAMAR, EXECUTOR OF GAZAWAY B. LAMAR, DECEASED,
Plaintiff in Error,
vs.
HUGH Mc CULLOCH.

No. 828.
OCTOBER TERM,
1885.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

GEORGE TICKNOR CURTIS,
EDWARD N. DICKERSON,
Of Counsel for the Plaintiff in Error.

THE EVENING POST JOB PRINTING OFFICE, 208 Broadway, N. Y.

BRIEF FOR THE PLAINTIFF IN ERROR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

G. De Rossett Lamar, Executor of Gazaway B. Lamar, deceased, Plaintiff in Error, vs. Hugh McCulloch.	No. 828. Writ of Error to the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR THE PLAINTIFF IN ERROR.

Analysis of the Pleadings.

Gazaway B. Lamar, formerly a citizen of Savannah, in Georgia, but resident in the City and State of New York at the time of bringing this action, sued the defendant, Hugh McCulloch, in the Supreme Court of the State of New York, for the City and County of New York, by summons served September 24th, 1873, and on the 14th of

October, 1873, filed and served a complaint, charging an unlawful taking by the defendant from the possession of the plaintiff of 426 bales of cotton, at the City of Tallahassee, in the State of Florida, and the conversion of the same by the defendant in the months of October, November and December, 1865, and demanding judgment for the value of the same, alleged to be $110,760, with interest from December 15, 1865. The defendant appeared in the action by his attorney, George Bliss, Esq., United States District Attorney for the Southern District of New York, and on the 3d of November, 1873, removed the action into the Circuit Court of the United States for the Southern District of New York. And thereupon the plaintiff filed in the said Circuit Court his declaration in trover, charging the taking and conversion by the defendant of the said 426 bales of cotton, as the same had been charged in the original complaint in the State Court.

[The original complaint in the State Court and the declaration in the Circuit Court embraced the taking and conversion of another lot of cotton at Thomasville, in the State of Georgia; but at a subsequent stage of the action the suit was discontinued as to all but the 426 bales charged to have been taken and converted at Tallahassee, in Florida.]

On the 21st of January, 1874, the defendant, by his attorney, filed the following pleas:

1st. A plea of the General Issue.

2d. A justification of the taking by the defendant, as Secretary of the Treasury, under the Act of March 12, 1863, for the collection of abandoned and captured property, and the acts amendatory thereof and supplementary thereto. In this plea it was alleged that the State of Florida had been designated as in insurrection against the lawful Government of the United States by the President's proclamation of July 21st, 1862, and that the cotton in question had been taken, received and collected as abandoned and captured property into the hands of special agents, duly appointed by the defendant as Secretary of

the Treasury under the acts aforesaid, and that all his and their acts respecting the same had been done by him and them as officers of the United States, and in the administration of and in virtue and under color of the aforesaid Acts of Congress. That these official acts were the several supposed wrongs and grievances in the declaration complained of. Wherefore, the plea concluded, by force of section 3d of the Act of March 12, 1863, and of section 3d of the Act of July 27th, 1868, the plaintiff has no legal course of action against the defendant, but is barred from such action, which by force of the statutes aforesaid, is exclusively within the jurisdiction of the Court of Claims. Verification whereof is tendered by the plea.

3d. A plea that the action is brought against the defendant for or on account of "*private property*" taken by him as an officer or agent of the United States, in virtue or under color of the Act of Congress of March 12, 1863, and the acts amendatory thereof and supplementary thereto; and that by force of section 3 of the Act of July 27th, 1868, the plaintiff has no legal cause of action against the defendant, and this the defendant is ready to verify. Wherefore the defendant prays judgment if the plaintiff ought to have or maintain his action.

4th. A plea that the cause or causes of action did not accrue *within six years* next before the commencement of the suit, in manner and form, &c., and this the defendant is ready to verify; wherefore he prays judgment, &c.

5th. A plea of a Federal Statute of Limitations, namely, § 3 of the Act of March 3, 1863. This plea alleged the same justification as in the second plea, and averred that all of defendant's acts were done by him as Secretary of the Treasury, and in the administration of, and in virtue and under color of, the Acts of Congress pleaded, and that the supposed cause of action did not accrue at any time *within two years* next before the commencement of the suit—verification whereof is tendered, and judgment for the defendant is prayed.

6th. A plea that the plaintiff ought not to have or maintain this action, because the plaintiff, prior to his action and before and after July 25, 1862, did not cease to aid, countenance and abet those persons engaged in armed rebellion against the Government of the United States within the districts declared to be in insurrection, &c., in the State of Georgia and elsewhere, and at his residence, and did not thereafter within sixty days after public warnings and proclamations, &c., cease to aid, countenance and abet the rebellion and return to his allegiance to the United States, but, on the contrary, did aid and abet, &c., by reason whereof all his estate and property, including the said cotton, if, in fact, it belonged to him, became the *property* of the United States, and liable to seizure and use by the United States and its officers, and it was so seized and used by the United States. Wherefore the plaintiff ought not to have and maintain his action against the defendant. Verification is tendered and judgment is prayed.

At the October Term of the Circuit Court in the year 1873, to wit, February 21, 1874, the plaintiff filed the following:

REPLICATIONS.

1st. Joining issue to the country on the defendant's plea of the General Issue.

2d. To the second plea, that the defendant of his own wrong, and without the justification set up in the plea, took, seized, kept and detained the 426 bales of cotton, and committed the several trespasses, &c., in manner and form as in the plaintiff's declaration complained, and making issue to the country thereon.

And for a further replication to the second plea, that the cotton was not abandoned or captured property, and had not been taken, received and collected as such, and was not seized by any agent or officer of the United States as such, and that the defendant's acts respecting the same were not done by him as Secretary of the Treasury, as alleged in the said plea. Issue to the country tendered.

3d. To the third plea, a denial that the defendant's acts were done in the administration of and under color of the abandoned and captured property acts, as pleaded. Issue to the country tendered.

4th. To the fourth plea, that the defendant, at the time when the cause of action accrued, was in parts beyond the jurisdiction of the Circuit Court for the Southern District of New York, and that he returned within the limits of the State of New York on the 24th day of September, 1873, and not before; and that the plaintiff brought his action by serving a summons on the defendant within six years after his first return into the State of New York within the jurisdiction of the said Circuit Court, after the accruing of the cause of action, at the Southern District of New York, which the plaintiff offers to verify, and he prays judgment for his damages sustained, &c.

5th. To the fifth plea, denial of the justification therein pleaded, and averment that the cotton was not lawfully appropriated and forwarded according to the provisions of the Acts of Congress, and that the defendant's acts were not done by virtue and under color of authority derived from and exercised under the Acts of Congress pleaded. Issue to the country tendered.

And for a further replication to the fifth plea, that the defendant before and at the time when the cause of action accrued, was in parts beyond the jurisdiction of the Circuit Court of the United States, for the Southern District of New York, and not within the limits of the State of New York, until the 24th of September, 1873, when he returned within the said jurisdiction, which was his first return, &c.; and that the plaintiff brought his action within two years after the defendant's first return within the jurisdiction. Which the plaintiff is ready to verify, and he prays judgment for his damages.

6th. To the sixth plea, that defendant took the cotton of his own wrong and without the justification pleaded, &c. Issue to the country tendered. And further that the

plaintiff's property had not become the property of the United States, and was not liable to seizure and use by the United States and its officers and was not seized and used by the United States or its officers because of the plaintiff's aiding and abetting the rebellion after July 25, 1862, as in the sixth plea alleged. Issue to the country tendered.

At the same term, October Term, 1873, by appropriate rejoinders, &c., all the issues of law and fact made by the above cited pleas and replications were duly joined. On the 5th of October, 1874, the plaintiff, Gazaway B. Lamar, died, and his executor G. De Rossett Lamar was admitted by the Court below as plaintiff in the action, at the October Term, 1875. The action then stood over until the October Term, 1879, when the defendant, on the 12th of December, 1879, obtained leave to file an additional plea and an amended rejoinder.

ADDITIONAL PLEA.

This plea set up in bar of the action the following averment:

That the plaintiff ought not to have and maintain his action, because the defendant says,

That before this suit, the plaintiff, Gazaway B. Lamar, filed his petition in the Court of Claims of the United States, wherein he alleged that in the year 1865 he was the owner and in possession of 3,701 bales of cotton of the average weight of 500 pounds each, of which 3,275 were stored in the City of Savannah, Georgia, and shortly after the occupation of that city by the military forces of the United States, in January, 1865, were seized by order of Major-General W. T. Sherman, without the consent of the petitioner and against his will.

That in the said petition he further alleged:

That no part of said cotton, or its proceeds, was appropriated in any way to the use of the army or navy of the

United States, but was turned over by the officers seizing it to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States; that 426 bales were seized in the months of October, November and December, 1865, near Tallahassee, in the State of Florida, where it was then stored, by Samuel G. Cabell, treasury agent, and subsequently shipped to New York, where it was sold by Simon Draper, United States Treasury agent, and the proceeds thereof paid into the Treasury of the United States; and he further alleged (in the said partition) that said cotton was worth the sum of $1,046,250; that he had on the 6th of January, 1865, taken the oath of allegiance prescribed by the proclamation of the President of the United States of December, 1863, and was not included in any of the classes excepted.

The amended plea herein continues as follows:

And the said plaintiff in said action attempted and failed to show that he was the owner of the 426 bales, which in said petition he alleged were seized by Samuel G. Cabell, Treasury agent, and subsequently shipped to New York, where it was sold by Simeon Draper, United States Treasury agent, and the proceeds thereof paid into the Treasury of the United States.

And in the said action (in the Court of Claims) the Honorable William A. Richardson, Secretary of the Treasuary of the United States, transmitted to the Court of Claims, in answer to a call from the Court of Claims of the United States, the following information taken from the files of the Treasury Department, to wit, that S. G. Cabell shipped to New York to S. Draper, United States agent, 272 bales of cotton, reported by him to have been collected in Florida as the property of the Importing and Exporting Company of Georgia; President, G. B. Lamar; and the net proceeds thereof ($21,594.14) were paid into the Treasury of the United States.

And such proceedings were thereupon had in said action that afterwards the cause came on for trial, and the

Court [of Claims] on the 2d of June, 1873, filed the following findings of fact, and no other:

"In this case the Court finds the facts to be as follows:

"At the time of the capture of the City of Savannah, "Georgia, in December, 1864, by the military forces of "the United States under General Sherman, the claimant "owned in said city ninety-one bales of Sea Island cotton "and three thousand one hundred and eighty-four bales "of upland cotton, all of which were captured by said "forces and shipped to Simeon Draper, agent of the "Treasury Department, at the City of New York, and "there sold by him, and the proceeds thereof, amounting "to $231.79 per bale for the Sea Island cotton, and $175.33 "per bale for the upland cotton, agregating five hundred "and seventy-nine thousand three hundred and forty-three "dollars and fifty-one cents ($579,343.51), paid into the "Treasury of the United States."

"And the following conclusion of law:"

"Upon the foregoing facts the conclusion of law is that "the claimant is entitled to recover the proceeds of said "cotton as stated."

[The amended plea further alleges as follows]:

And thereupon, afterwards, on the second day of June, 1873, judgment was ordered to be entered as follows:

"The Court upon due consideration of the premises, "find for the claimant, and do order, adjudge and decree "that the said Gazaway B. Lamar do have and recover of "and from the United States the net proceeds of ninety-"one bales of Sea Island cotton, at $231.79 per bale, and "3,184 bales of upland cotton at $175.33 per bale, amount-"ing in the aggregate to the sum of five hundred and "seventy-nine thousand three hundred and forty-three "dollars and fifty-one cents ($579,343.51."

[The amended plea continues as follows]:

And afterwards, to wit, on or about the 13th of April, 1874, the said sum of $579,343.51 was paid to said Gazaway B. Lamar.

And the petitioner in said suit in the Court of Claims is the same person who instituted this action, and the defendant in this action was, at the time of the seizure, shipment and sale of the cotton alleged in said petition to have been seized near Tallahassee, in the State of Florida, Secretary of the Treasury of the United States, and the Samuel G. Cabell, alleged in said petition to have seized said cotton, was a special agent appointed by the Secretary of the Treasury to receive and collect abandoned and captured property, in pursuance of an act of Congress approved March 12, 1863, entitled "An Act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the acts in addition and amendment thereof.

And the 426 bales of upland cotton in the possession of Gazaway B. Lamar at the City of Tallahassee, Florida, in the declaration in this action mentioned, and the 426 bales alleged in the said petition to have been taken by Samuel G. Cabell, treasury agent, in October, November and December, 1865, near Tallahassee, in the State of Florida, are one and the same, and the taking in this and the said action are one and the same, they being one and the same trespass, thing and matter, and not divers, and at one and the same instant of time done; and the trover and conversion supposed in this action by this defendant was the taking, seizure and sale of said cotton and the transfer of the proceeds thereof to the Treasury of the United States, set forth in the said petition, and the proceeds of the cotton for the alleged trover and conversion of which this action is instituted, have been paid into the Treasury of the United States.

All of which the defendant is ready to verify.

Wherefore he prays judgment if the plaintiff ought to be admitted against the said record to say, by his declaration, that "on the 1st day of October, in the year of our Lord one thousand eight hundred and sixty-five, he was lawfully possessed, as of his own property, of certain four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hun-

dred and sixty dollars, at the City of Tallahassee, Florida, to wit, at the Southern District of New York, or that, being so possessed, the said plaintiff afterwards, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-five, at the City of Tallahassee, in the State of Florida, to wit, at the Southern District of New York, casually lost the said four hundred and twenty-six bales of upland cotton, weighing two hundred and thirteen thousand pounds, of the value of one hundred and ten thousand seven hundred and sixty dollars, or that the said cotton afterwards, to wit, on the day and year last aforesaid, at Tallahassee, in the State of Florida, to wit, at the Southern District of New York, came to the possession of the said defendant by finding, yet the said defendant, well knowing the said cotton to be the property of the said plaintiff, and of right to belong and appertain to him, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, has not as yet delivered the said cotton, or any part thereof, to the said plaintiff, although often requested to do so, or that afterwards, to wit, on the day and year last aforesaid, at Tallahassee, in the State of Florida, aforesaid, to wit, at the Southern District of New York, he converted and disposed of the said cotton to his own use (Record, pp. 17–20).

To this additional plea the plaintiff, by consent of the defendant's attorney, on the 9th of November, 1883, filed a demurrer and a replication. The demurrer, on argument before the trial of the action, was overruled by the Court below, and the replication stood for answer. On the 5th of November, 1884, the defendant answered the replication by a rejoinder, which joined issue thereon to the country. The following is the *replication to his amended plea:*

" And the said plaintiff, as to the said amended plea of " the defendant by him above pleaded, says that he, the " said plaintiff, by reason of anything in that plea alleged, " ought not to be barred from having and maintaining his " aforesaid action thereof against the defendant, because

"in the proceeding in the Court of Claims in the said "plea recited no recovery or adjudication was in fact had "or obtained by the plaintiff in respect to the four hun- "dred and twenty-six bales of cotton in the plaintiff's "declaration alleged to have been wrongfully taken and "converted to his own use by the defendant at or near "Tallahassee, in the State of Florida, and no part of the "proceeds thereof has ever been paid to the plaintiff from the "Treasury of the United States, or otherwise, and be- "cause the four hundred and twenty-six bales of cotton "in said petition in the Court of Claims mentioned, "although the same property as the four hundred and "twenty-six bales of cotton in the plaintiff's declaration, "charged to have been sized at Tallahassee, in the State "of Florida, was the individual property of the plaintiff's "testator, Gazaway B. Lamar, and no part of the same "was at any time the property of the Importing and Ex- "porting Company of Georgia, and the same was of his "own wrong, and without the justification in the said "amended plea set up, seized and converted to his own "use by the defendant. And this the plaintiff prays may "be inquired of by the country.

"GEO. TICKNOR CURTIS,
"Of Counsel with the Plaintiff."

The issue to the country tendered by the above replication to the amended plea was joined by the defendant November 5, 1884 (Record, p. 29).

[The amended rejoinder filed by the defendant December 12, 1879, and the plaintiff's surrejoinder thereto, are noticed in this brief, *post*, p. . In the record they will be found at pp. 20 to 24, and p. 26. The issue which they make does not affect the ruling of the Court below, which it is the object of the present writ of error to correct.]

Under these pleadings, the issues to be tried were :

1st. Whether the four hundred and twenty-six bales of cotton were captured or abandoned property when they were seized by S. G. Cabell, at Tallahassee, in Florida, act-

ing as a duly authorized agent of the Secretary of the Treasury. If the cotton was not, before the seizure, out of the possession of the plaintiff's testator, or of his agent or agents in whose custody he had left it for safe keeping, it was not abandoned property within the meaning and intent of the abandoned and captured property acts. If the cotton was not seized by the military authorities of the United States, and in some formal or regular way handed over to a civil agent of the Treasury, and receipted for by him, it was not captured property within the meaning and intent of the acts authorizing the collection of captured property. If the defendant knew of and authorized or ratified the removal of this cotton by S. G. Cabell from the possession of the plaintiff's testator, or of his agent or agents, its shipment to New York, its sale and the payment of the proceeds into the Treasury, and it was not abandoned property, and had not been captured, the defendant was a trespasser *ab initio*, and the action of trover was rightly brought.

2d. Whether the action, at the time it was brought, was barred by any statute of limitations? The defendant was not a resident of the State of New York when the cause of action accrued, or when the action was originally brought in the State Court. Whether the action was barred, as pleaded, because it was not commenced within six years from the time when the right of action accrued, or was barred, as pleaded, because it was not commenced within two years from the time when the right of action accrued, depended upon the time of the defendant's first coming within the jurisdiction of the State and District of New York and the time of the service of the summons. On this point the pleadings made an issue of fact to be put to the jury, under proper instructions of law.

3d. Whether the present action of trover, founded on a trespass by the defendant on the plaintiff's rights of property, is barred by reason of the fact that the plaintiff filed in the Court of Claims his petition to recover and be paid the proceeds of two lots of cotton, one *captured* at Thomasville, in Georgia, and the other the same

lot of 426 bales, which were *seized* at Tallahassee, in Florida, and which are the subject of the present action? Whether the present action of trover is barred or in any way affected by the proceedings in the Court of Claims depends upon the jurisdiction of that Court and upon its adjudication in the case.

If there was no adjudication in that Court respecting these 426 bales of Florida cotton, either because the petitioner could not then prove his ownership, or because there had been no capture or military seizure of *this* lot of cotton, there was no jurisdiction in the Court of Claims respecting it or its proceeds, and the decision of that Court awarding to him only the proceeds of his Thomasville cotton, of which he did prove his ownership, and of which there was a capture or military seizure, and a transfer by the military power to a civil agent of the Treasury, but awarding him nothing for his Florida cotton, shows on its face that any cause of action which he had against the defendant for an irregular, unlawful and tortious seizure, removal and appropriation of the 426 bales taken by Cabell at Tallahassee, in Florida, was in no way affected by the proceedings in that court.

These being the main issues made by the pleadings, and being mixed questions of law and fact, the plaintiff had an unquestionable right to have them put to the jury and respectively passed upon under suitable instructions concerning the law applicable to each of them. The record shows that the issues made by the pleadings were not so put to the jury, but that they were peremptorily directed by the presiding judge to return a verdict for the defendant on the evidence introduced by the plaintiff, upon the sole ground "That the Court of Claims had exclusive jurisdiction of the cause of action set forth in the plaintiff's declaration, and in the evidence as given thereunder, by virtue of the statute of March 12, 1863, and the statutes passed amendatory thereof." (Record, p. 151.). This ruling, and the verdict returned in consequence of it, left undetermined the mixed question of law and fact respecting the limitations pleaded, and every other question in the case, and rested the result of the trial upon the single proposition that the case made by the plaintiff's declara-

tion, and by his evidence adduced in support of his cause of action, was one of which the Court of Claims had exclusive jurisdiction; whereas, the cause of action set forth in the declaration and supported by the plaintiff's evidence was a personal tort, and the jurisdiction of the Court of Claims was a jurisdiction *in rem* by petition to be paid the proceeds of property captured by the military authorities of the United States, which had been regularly turned over by them to some civil agent of the Treasury, forwarded and sold, as directed by the statutes and the Treasury regulations.

FACTS PROVED AT THE TRIAL, ON THE PART OF THE PLAINTIFF.

Gazaway B. Lamar, the plaintiff's testator, was born in Georgia, and resided there until about the year 1846, when he removed to the city of New York. In 1857 he returned to Georgia, and in the fall of 1858, or the spring of 1859, he again took up his residence in New York, and remained there until about May, 1861, when he returned to Savannah, and continued to reside there until the capture of that city by General Sherman's forces. During the civil war, and while residing at Savannah, he was a supporter of the Confederate Government, but it does not appear that he ever held any office, civil or military, under that government or the government of Georgia. On the 6th of January, 1865, he took the amnesty oath under President Lincoln's proclamation of December 8, 1863; and it does not appear that he ever afterward rendered any aid or comfort to the rebellion in any way, but on the contrary he testified in his deposition, taken *de bene esse* in this action and read at the trial, that he faithfully observed that oath. [His testimony was not contradicted at the trial of this action.] In January, 1870, he removed to New York, and resided there until his death, which occurred on or about October 5, 1874. During the war he was for some time President of the Bank of Commerce in Savannah. While residing in New York, from 1859 to 1861, he was President of the Bank of the Republic in that city. Dur-

ing the war, while living at Savannah, he was largely engaged in the purchase and sale of cotton. When General Sherman's army penetrated into Georgia, in the fall of 1864, Mr. Lamar had, in the City of Thomasville, in that State, and in its vicinity, on different plantations, at railroad depots, and in private warehouses, a very large quantity of cotton. Thomasville is 190 to 200 miles from Savannah by railroad and steamboat. The seizure of this lot of cotton was described by Mr. Lamar, in his deposition in answer to interrogatories put by his counsel, as follows:

"Q. 8. When and how did that cotton, the cotton at "Thomasville and vicinity, pass from your possession and "from under your control?

"(Objected to as immaterial and irrelevant.)

"A. A man named William A. Beard, acting under a "letter from Mr. Hugh McCulloch, on the 27th of Septem- "ber, 1865, appeared in Thomasville, and was taking the "cotton when I arrived in the city; I endeavored to pre- "vent him, and failed in the effort; I took a witness with "me to his lodgings, in the afternoon, and demanded the "restoration of the cotton that he had taking during the "day.

"(At this point defendant's counsel objects to the wit- "ness testifying as to what occurred at that interview, "until the defendant is connected with it by competent "evidence.

"Witness continues: Which he refused to surrender; "I then proceded to take a writ of bail and trover, issued "by Judge Hansel of the Superior Court of the State of "Georgia, requiring Beard——

"(Counsel for defendant objects to contents of "writ.)

"Witness continues: To surrender the cotton, or give "security for the amount of it; I went with the deputy- "sheriff and served it upon Beard the next day, whilst he "was taking more cotton out of the warehouse; Beard re- "fused to obey, and when the sheriff and I undertook to "carry him before Judge Hansel, he called some negro "troops and ejected us from the warehouse where the "cotton was; I left my nephew there to watch their

" movements, whilst I went to Milledgeville to consult " the Governor of the State; the Governor offered me " no relief. * * *"

[The facts in relation to Mr. Lamar's Thomasville cotton are not material in this action otherwise than as showing the general course of the Treasury action towards him, and as explaining how he was deprived of his books and papers. These facts were not controverted at the trial by any evidence introduced by the defendant, although an effort was made to shake Mr. Lamar's testimony on cross-examination. His Thomasville cotton was the subject of an action of trover, brought by Mr. Lamar in the First Circuit, against A. G. Browne *et al.*, the Treasury agents who removed the cotton, which action was decided by this Court at the October Term, 1875, reported in 92 United States Reports, p. 187, *et seq.* The decision of this Court was that Lamar's Thomasville cotton was subject to capture and was captured, and that the Treasury agents were not in that case liable as trespassers, as there had been a previous capture or military seizure of the cotton, a regular transfer to the civil agents of the Treasury, and all the proceedings in the forwarding and sale of it, and payment of the proceeds into the Treasury, had been regular. The report of this case in 92 U. S. shows in *extenso* the documentary evidence of the capture, the transfer to the Treasury agents, &c.]

In regard to his Florida cotton, seized by Cabell, at and near Tallahassee, and now the subject of this action, the testimony of Mr. Lamar was as follows:

" Q. 23. What did you do in relation to the cotton of " which you have spoken as being in the State of Florida?

" A. I went there and found it in the possession of " Samuel G. Cabell, a Treasury agent, but he refused to " allow me to ship it; the next I heard of it was that, in " obedience to the orders of Mr. McCulloch, it had been " shipped by Cabell to New York by his orders; I de- " manded the restoration of it also, which he refused in " about the same terms as he did when I demanded the " restoration of that from Thomasville.

" Q. 24. In what part of Florida was this cotton of

" which you have last spoken, while in your possession " and under your control?

" A. It was in seven different plantations in and about " Tallahassee; it all had to be sent to Tallahassee to be " shipped from there by rail.

" Q. 25. Of how many bales did this lot of cotton con- " sist?

" A. Three hundred and thirty-five bales, and ninety- " one bales of cotton which had been stolen from Grover's " warehouse, near the line of Georgia, and were pursued " and taken by Cabell and added to the three hundred and " thirty-five bales which he had taken from Florida, mak- " ing a total of four hundred and twenty-six bales.

" Q. 26. In all cases in which you have spoken of a Mr. " McCulloch, to whom do you allude?

" A. I allude to Hugh McCulloch, who was at that time " Secretary of the Treasury, and who, I believe, is now a " resident of London, the defendant in this case.

" Q. 27. Where did these interviews, of which you have " spoken as having had with McCulloch, take place?

" A. In the Treasury building in the City of Washing- " ton.

" Q. 28. Where did Hugh McCulloch then reside?

" A. I believe he resided in Washington City.

" Q. 29. When did he remove to England?

" A. I am not informed exactly when he did, but several " years ago.

" Q. 30. Since the interviews of which you have spoken, " at which you demanded these lots of cotton, has Mr. " McCulloch been in the State of New York; and, if so, " how often to your knowledge, and when for the first time " to your knowledge, after those interviews?

" A. I have not seen him here at all, but I heard of his " being here in October, 1873, that is the first and only " time that I have heard of his being here.

" Q. 31. You have spoken of a list of bales of cotton " taken from your books in the possession of Mr. McCul- " loch; how did you lose possession of those books and " how did Mr. Culloch acquire possession of the same?

" A. A few days after Sherman took possession of the " City of Savannah, I think about the first of January,

" 1865, I received a military order to give A. G. Brown,
" Sr., a Treasury agent, the building of the Bank of Com-
" merce for his office ; I did so, and Mr. Brown promised
" me, in the presence of his clerks and upon his word of
" honor, several times repeated, that my books and papers,
" then in the bank, should be safely kept and unmolested;
" within a few hours after I procured a place to keep them
" in, and returned to get them, when he was very rude
" and insulting, refused to give them up, and ordered me
" out of the house ; I used various efforts through the
" military authorities to procure their restoration, all in
" vain, until March, 1865, General Gilmore ordered them
" to be returned to me ; Mr. Brown brought all the un-
" important and useless papers and delivered them up to
" me at the bank, and when asked what had become of
" the others he said they had been sent to Washington
" and were beyond his control.

" Q. 32. Did you subsequently find them in Washing-
" ton ?

" A. I did ; in the possession of Mr. McCulloch, who re-
" fused repeatedly to restore them to me on various pre-
" tenses, one of which was that they would be important
" documents in my favor in any suit I might bring for my
" cotton.

" Q. 33. Have you ever demanded possession of those
" books from Mr. McCulloch ?

" A. I did, several times, and every time was refused.

" Q. 34. Have you ever, since that time, obtained posses-
" sion of those books ?

" A. Never."

With respect to his ownership and the situation of this lot of 426 bales at and near Tallahassee, Mr. Lamar testified as follows, on cross-examination :

" Q. 42. Did you purchase yourself of each of the per-
" sons you have just named ?

" A. I did not purchase a bale individually.

" Q. 43. The names that you have given, then, am I to
" understand, are names reported to you by your agent or
" agents ?

"A. Yes.

"Q. 44. You then know nothing more about the pur-
"chase of that cotton than what your agents told you, do
"you?

"A. Only so much, that the agent furnished me with
"invoices with the marks, numbers and weight of the
"cotton and its cost.

"Q. 45. Nothing more?

"A. Yes, where it was and the receipts of the planters.

"Q. 46. Question 44 repeated.

"A. No more than I have stated.

"Q. 47. Was all this cotton that you have referred to
"on this cross-examination reported to you by one agent;
"if so, who was he?

"A. It was all reported to me by one agent, except five
"lots, and that agent was William W. Cheever.

"Q. 48. Where does he reside?

"A. He died in July, 1863.

"Q. 49. When did you first employ him, or did you ever
"employ him?

"A. I employed him in the fall of 1862; he had no
"business then; he was utterly bankrupt; he resided in
"Savannah.

"Q. 50. What had been his business when you first knew
"him?

"A. Clerk in a grocery store; he had been a commis-
"sion merchant in Albany, Georgia, before the war com-
"menced, in the firm of Ivins & Cheever; that firm failed
"before 1861; nobody succeeded it in its business that I
"know of." * * * *

[Mr. Lamar's deposition *de bene esse* was taken in June and July, 1874. As, from want of the best materials of proof of Mr. Lamar's ownership of the 426 bales of Florida cotton, in consequence of the seizure and removal of his books and papers, the plaintiff's counsel, when preparing this case for trial, found it expedient to make more specific proof, and inquiry was made in Florida to ascertain if there was a living witness to transactions which had occurred eighteen years before. It was found that there was such a witness living in Florida, John P. Coles, who

had been Mr. Lamar's agent at Tallahassee, and who had much personal knowledge of the ownership and situation of this cotton at or near Tallahassee, its seizure by Cabell, &c. Coles was sent for to come to the City of New York, and there, in January, 1884, gave his deposition, which was read at the trial. The facts proved by this deposition are the following]:

DEPOSITION OF JOHN P. COLES.

Coles was what was called in Florida a cotton warehouse man and a weigher of cotton. He was an agent for Mr. Lamar in Florida, and in correspondence with him in 1865. He was acquainted with Samuel G. Cabell, who told Coles that before he became a Treasury agent he had been a blockade runner. After the surrender of General Lee's army in 1865, Cabell appeared at Tallahassee, claiming to be a Treasury Agent. At this time the witness, Coles, had charge of all Mr. Lamar's cotton in Florida. He had personal knowledge of the different lots of Lamar's cotton then at or near Tallahassee. These different lots, amounting to 426 bales, had been purchased for Lamar by W. W. Cheever, and were paid for by Cheever by funds furnished to him by Lamar. Of the purchase and payment the witness, Coles, had personal knowledge, and in his deposition he identified most of the vouchers. Cheever died in 1863. On the 15th of February, 1866, Coles wrote and mailed to Lamar, at Savannah, a letter, on the top of which was a memorandum in the handwriting of Coles, specifying the different lots, which aggregated 426 bales, with the names of the planters from whom they had been purchased, and on whose plantations they had been left for safe keeping, subject to Lamar's order, or the orders of his agents.

(See Plaintiff's Exhibit No. 1, Deposition of John P. Coles, Record, p. 111, 112.)

This letter was received by Lamar at Savannah, and he immediately went to Tallahassee. When he arrived there, Cabell had had some of the cotton hauled into Tallahassee

by wagons, and was engaged in forwarding it by rail to Jacksonville, for shipment to New York. Lamar, in the presence of Coles, at the railroad depot, claimed the cotton as his property, and forbade its shipment by Cabell. They had high words. Cabell said the cotton was going forward, and it did go forward to Jacksonville. Cabell did not then claim that the cotton was the property of the Confederate Goverment, or of any Importing and Exporting Company, or the property of any one excepting G. B. Lamar. Prior to the time of Lamar's interview with Cabell at the railroad depot in Tallahassee, namely, on the 30th of November, 1865, Cabell called upon Coles at his place of business, and told Coles that he had an order from the Treasury Department to forward all of Lamar's cotton in Florida to Mr. S. Draper, in New York, and also an order from General Newton, then the Federal General commanding in the Department of Middle Florida. Cabell gave as a reason for calling upon Coles that Coles was acting agent for Lamar, and also because Coles had a warehouse near the railroad depot, where cotton brought in from the country was stored until sent away by railroad. Cabell said that he came to Coles because the latter was Lamar's agent; asked him if he was, and Coles replied that he was. At the time of this conversation, Lamar's 426 bales of cotton were distributed around on different plantations in different parts of the county, as indicated by Coles, memorandum of February 15, 1866, to Lamar, excepting so much of it if any as Cabell had had hauled into Tallahassee

The foregoing facts constitute the most material parts of Coles' testimony, although both his direct and his cross-examination related to many minute particulars concerning his means of knowledge that these 426 bales of cotton were the property of Lamar. The evidence adduced by the plaintiff at the trial tended in the strongest manner to the identification of every bale of this cotton as the property of Lamar, the seizure and removal by Cabell, the shipment to New York, the sale there by the Government's cotton agent, and the payment of the proceeds into the Treasury. As a matter of course, the evidence of Lamar's ownership, the loss of the cotton, its value, &c., &c., were to be passed upon by the jury at the trial, under

proper instructions of law. The direction given to the jury to return a verdict for the defendant on the sole ground that the plaintiff's evidence made a case of which the Court of Claims had exclusive jurisdiction, necessarily assumed Lamar's ownership of the cotton. *In this Court, therefore, his ownership must be taken as a fact appearing on the record; and the correctness of the peremptory direction given to the jury to return a verdict for the defendant must be tested by the circumstances of Cabell's seizure and removal of the cotton, no evidence whatever being introduced by the defendant.*

History of S. G. Cabell, as a Treasury Agent, his Seizure and Removal of Lamar's 426 bales of Cotton, and his authorization by the Defendant, as Proved by the Plaintiff's Evidence.

Samuel G. Cabell, who was and is a citizen of the State of Illinois, appears to have been one of those Northern adventurers who followed the Federal armies for purposes of gain, sometimes acting against and sometimes for the Federal Government. Prior to the autumn of 1865 he had been a blockade runner. In October, 1865, he was intimate with Major-General Foster, an officer of United States volunteers, stationed at Tallahassee. On the 29th of October, 1865, General Foster wrote to the defendant, Secretary of the Treasury, recommending Cabell for appointment as special Treasury agent for Middle Florida (Record, p. 127).

Prior to this time Cabell had been searching around in Florida for cotton, and he appears to have held some irregular appointment from J. H, Alexander. assistant special Treasury agent at Pensacola and Apalachicola, under a promise from Alexander of large compensation for collecting certain *captured* property (Record, p. 128). This employment apparently related to certain captured property in Florida, supposed to belong to the Confederate Government. All that Cabell appears to have done in re-

gard to *this* property was to discover the places where it lay. The Secretary of the Treasury did not think fit to allow Cabell the compensation promised by Alexander. On the 17th of November, 1865, Cabell was in Washington. There was then placed in his hands a letter, signed by the defendant as Secretary of the Treasury, which read as follows :

"TREASURY DEPARTMENT, November 17, 1865.

"SIR : I have received your application for compensa-
" tion for certain services performed by you under an ap-
" pointment from J. H. Alexander, Esq., ass't special
" agent, at Pensacola and Apalachicola, Fla., in collecting
" and securing for the Government of the United States
" *certain captured property* therein enumerated.

" In fixing the amount of your compensation Mr. Alex-
" ander transcended his authority and promised you an
" amount larger than has been approved by me in any
" case, and much larger, in my opinion, than the circum-
" stances in these cases would justify. Nor does it appear
" that *the property in question* has been actually placed in
" possession of any agent of this Department, or in fact
" removed from the places where it was discovered. In
" view, however, of the stipulations made by Mr. Alexan-
" der and services you have performed and will still be
" able to perform for the Department in connection with
" *the collection of this property*, I desire that you return
" to your late field of operations and do all in your power
" to secure to the Government the *cotton named by you*,
" and to transport the same to a proper place of shipment
" at the earliest practicable day; and I will agree to make
" such an allowance as compensation for your services as
" will be liberal and just, in view of the character of your
" services and the risk and expenses incurred by you in
" performing them. To this end it will be necessary for
" you to keep accurate accounts and a full history of all
" the facts connected with all lots of cotton so secured and
" delivered by you.

"Please acknowledge the receipt hereof, and advise

" me whether the proposition herein made will be accepted
" by you.

" Very respectfully,

" (Signed) H. McCULLOCH,
" Secretary of the Treasury.

" S. G. CABELL,
" Acting Aid to Ass't Sp'l Agent,
" Treas'y Dep't, Ninth Special Agency."

From this letter, and from Cabell's answer, which bears date November 18, 1865, it appears that on the 16th of November Cabell had sent a written communication to the Secretary of the Treasury (of which no copy is in evidence), but which appears from other evidence to have referred to certain cotton in Florida. Cabell, on the 18th of November, accepted the appointment in regard to the cotton named by him in his communication of November 16th. But prior to this time, namely, in September, October and November, 1865, before he went to Washington, he had made his seizures of Lamar's cotton on the different plantations, or in the warehouses where it was stored, near Tallahassee, and of which there had been no previous capture or seizure whatever by any military authority (Record, p. 132). On the 30th of November, Cabell was back in Tallahassee, and called on Coles as Lamar's agent, but did not claim that the cotton which he had seized was anybody's property but Lamar's, or that it had been purchased and held by Lamar to aid and abet the rebellion. At that time there was no rebellion, no resistance anywhere to the Federal Government, and the Federal military forces were making no captures of private property. Lamar's property in Florida, if liable to military capture after he had taken the amnesty oath, had not been touched by the military authorities at all. It appears that Cabell, on the 17th of February, 1866, made to the Secretary of the Treasury a somewhat rambling report of his doings in Florida (Record, p. 131), but some facts can be extracted from it with certainty. They are the following :

1st. That on the 25th of January, 1866, Cabell shipped from Jacksonville to Simeon Draper, United States cotton

agent in New York, two lots of Lamar's cotton, namely, 177 bales by the brig *Lewis Clark*, and 95 bales by the schooner *Queen of the West*. (See also the Bills of Lading, Record, pp. 147, 148.)

2d. That this cotton was "seized" *by him*. [He so states in his report, and he does not state that he received it from any military authority whatever, or that he took it under the order of any military officer.]

3d. That in this report he represented to the Secretary that "the above mentioned cotton was owned by the Exporting and Importing Company of Georgia (President, G. B. Lamar), a company engaged in the sole business of blockade running, and holding such property for the purpose of aiding and abetting the Rebellion, as stated in my communication to you of the 16th November last." [As his communication of November 16 has never been produced in any of the proceedings relating to Lamar's cotton, either in the Court of Claims or in the present action, there are no means of determining what he said in that communication about the ownership. Even if the cotton had in fact belonged to that company, or to any one but G. B. Lamar in his own right, Cabell could not have lawfully seized it as captured property, nor could the Secretary of the Treasury have authorized him to take it or collect it as such, excepting from the hands of the military authorities of the United States.]

4th. That this cotton was purchased by Lamar's agents in Florida, and left on the plantations subject to his or their order.

5th. That a part of this cotton was seized by Cabell on the plantation of G. W. Bellamy, in Jefferson County, Fla., on or about September 20, 1865. From Bellamy he took fifty-six bales. In the month of September, 1865, he seized 178 bales of cotton on the plantation of F. R. Cotten. He states in his report that this lot was purchased *for* the Importing and Exporting Company by one P. S. Perkins, *as sub-agent of G. B. Lamar, the president*

of that company." [Of this there is not a scintilla of proof in the record.] On the 25th of October Cabell gave Cotten a written notice to *deliver* this cotton to the Pensacola and Georgia Railroad Company. Cotten asked to be shown an imperative military order before surrendering "the so-called Lamar Cotton." Cabell informed Major-General Foster of this, by whom, he says in his report to the Secretary, he was promptly furnished with a *guard* of United States soldiers to *assist* him. [What the soldiers did, or in what their assistance was necessary, he did not state. He had made this seizure in the previous month of September.] The cotton was stored on Mr. Cotten's plantations, twelve miles from Tallahassee. Cabell went there and found that the cotton was not in a condition for shipment. After rebaling it and otherwise putting it in order, he had it removed to Tallahassee and thence taken by railroad to Jacksonville. There could not have been any other seizure of this cotton than that made by Cabell himself in September, 1865. The guard of soldiers was furnished to him manifestly for the purpose of preventing any resistance by Cotten, the planter, to the *removal* of the cotton, and *not for the purpose of making a seizure or capture.* Cabell did not want any new seizure or capture. He acted throughout as if his own seizure was sufficient; always claimed that he made the seizure, and subsequently claimed and received from the Treasury a large compensation for making it, and for his other services in regard to Lamar's cotton.

That he took twelve bales from the plantation of George A. Croom, three miles from Tallahassee. For these he gave Croom a receipt on the 19th of December, 1865; *but he had on the 12th of October, 1865, served a notice of his seizure on Croom.*

That he took six bales from the Parkhill plantation, ten miles from Tallahassee; twenty-five bales from the Bailey plantation, forty-two miles from Tallahassee.

That he took six bales from the Parkhill plantation.

That the aggregate of the lots removed by Cabell, according to his report from the above mentioned six plantations, is 283 bales; or eleven bales more than the 272 which he shipped from Jacksonville to New York, by the

Lewis Clark and the *Star of the West.* What became of these eleven bales it is not now material to consider.

6th. It further appears that after deducting the 272 bales, shipped by the above vessels from Jacksonville, from the 426 bales proved by Coles' desposition as belonging to Lamar on seven different plantations, namely:

1.	Croom's	12 bales.	
2.	Bellamy's	56 "	
3.	Whitfield's	91 "	
4.	Gamble's	24 "	
5.	Parkhill's	23 "	
6.	Bailey's	25 "	
7.	Cotten's	97 "	} 2 lots.
	"	98 "	}
		426	

there remain 154 bales of Lamar's cotton unaccounted for. That the whole of Lamar's 426 bales were siezed and removed by Cabell from the different plantations or warehouses where they were stored, is proved by Coles' deposition. The 154 bales, difference between 426 and 272, appear by the proofs in the case to have been sent by Cabell to Jacksonville consigned to one Reuben Ottman, and they became mixed with and formed part of a large lot which Ottman shipped to New York by other vessels than the *Lewis Clark* and the *Queen of the West*, namely: the *Julia Crawford*, the *R. E. Pecker* and other vessels. For the decision of this Court on the present writ of error it is not necessary to trace these 154 bales of Lamar's cotton further than their seizure and removal by Cabell. On the new trial, which we claim must be awarded, the whole 426 bales will be traced into the possession of the Government, and their loss to the owner, by reason of Cabell's unlawful seizure and removal, will be shown, as we have already at the trial shown the loss of the 272 bales which Cabell caused to be shipped from Jacksonville by the *Lewis Clark* and the *Star of the West.*

We now make the following statement of the result of the plaintiff's evidence, showing

THE ENTIRE ABSENCE OF ANY MILITARY SEIZURE OR CAPTURE OF LAMAR'S COTTON IN FLORIDA, OR ANY PART OF IT, EITHER AS HIS INDIVIDUAL PROPERTY, OR AS THE PROPERTY OF ANY EXPORTING AND IMPORTING COMPANY.

1st. There is not a scintilla of evidence in the case that any military seizure or capture of a single bale of this cotton was made before or after Cabell's seizure of it. Cabell began his seizure of the different lots in September, 1865, or before, and had completed them all before he went to Washington in November, 1865, and before he had received his appointment as special agent to collect the cotton mentioned in his communication of November 16th, to the Secretary of the Treasury, whatever that communication was. At the time he made these seizures, he was in that part of Florida, acting or pretending to act in some capacity under an appointment as a kind of sub-agent of J. H. Alexander, "assistant special agent at Pensacola and Apalachicola," and in close intimacy with his friend Major-General Foster. This show of authority and his intimacy with Foster were sufficient to make most of the planters near Tallahassee submit to his seizures of Lamar's cotton, so long as he took care to provide, or to promise to provide, for their just claims upon it. Although he had no lawful authority to sieze this cotton, it will appear hereafter, in the course of this brief, that all his acts in relation to it were subsequently ratified and adopted by the defendant, the Secretary of the Treasury, with full knowledge and on the assumption that the cotton was Lamar's property.

2d. Not only is there no proof in the case that there was any previous military seizure or capture of any of this cotton, but it appears positively that Cabell made the seizures himself; it appears negatively that the military authorities did not seize or capture a single bale of Lamar's cotton in Florida, and that all the aid Cabell had from the

military consisted, *First*, in his being furnished with a guard of soldiers to prevent any resistance on the part of one of the planters, who does not appear to have made any resistance excepting to ask to be shown a military order to give up possession of the bales on his plantation, *and no such order appears to have been shown to him or to have been issued;* Second, in Cabell's obtaining the use of some army wagons, probably from his friend, General Foster, or from some quartermaster, to haul some of the cotton from the plantations into Tallahassee, after his return from Washington.

3d. It appears from Coles' deposition, a witness fully cognizant of the state of things in and around Tallahassee, that Cabell could have obtained private wagons to haul such of the cotton into Tallahassee as he brought there, but of course he would have had to pay a heavy bill of expense for this service. To avoid this, he procured the use of some army wagons, each wagon having a teamster, and a corporal or sergeant accompanied the train on each trip. These men wore the United States uniform, and the wagons were marked U. S. A. There were no other soldiers accompanying the wagons. (See Coles' Deposition, Cross-examination, Record, pp. 107, 108; Redirect, pp. 110, 111; Interrogatories 283–294.) That this constituted in any sense a military seizure or capture of the cotton, it would be absurd to pretend. Cabell had seized all the Lamar cotton months before. He never counted or relied on any other seizure. When the District Attorney cross-examined Coles, he probably expected to make it appear that at the plantations, or on the way, or at the railroad depot in Tallahassee, there was a military seizure or capture, because army wagons were employed to haul some of the cotton into Tallahassee. We shall submit hereafter what was necessary to constitute a military seizure or capture, and that without it no civil agent of the Treasury could have collected this cotton from the planters any more than he could have walked into Lamar's house in Savannah and taken the silver from off his dinner table.

4th. Some effort was made on the cross-examination of Coles to show that General Newton, who was in command at Tallahassee in November, 1865, issued some military order in relation to this cotton. General Newton is, or was, living at the time of the trial of this action, and might have been called as a witness, if the District Attorney had chosen to offer any proofs, or his order might have been produced from the War Department. But it is perfectly plain that if General Newton issued any order on the subject, it was nothing more than a direction to the persons managing the railroad from Tallahassee to Jacksonville (the Pensacola and Georgia Railroad), to permit this cotton to go through. At that time this road was in the possession and control of the United States military authorities, and no property could be forwarded on it by Cabell or any one else without a permit from General Newton. (See Coles' Deposition, Record, p. 93, Direct-examination, Interrogatories 72 to 80; Cross-examination, p. 109, Interrogatories 267 to 277.)

[From inquiries made in Washington before the trial of this action, the senior counsel for the plaintiff learned that Samuel G. Cabell was then living, and if so, he could have been called as a witness in the defense. Although this action was pending ten years before it was tried, and was defended by three successive District Attorneys, Cabell's deposition was never taken, and he was not called at the trial.]

5th. We have said that Cabell began to make his seizures of Lamar's cotton in September, 1865, because he so reported to the Secretary of the Treasury in his report of February 17th, 1866 (Record, p. 132). But there is some evidence that Cabell, soon after the surrender of General Lee's army, seized the Croom and Cotten cotton which belonged to Lamar, namely, in May or June, 1865. (See Coles' Deposition, p. 109.) But on the present writ of error we assume the date of his seizures as he put them in his letter of February 17, 1866, to the Secretary, for in that letter he gives a detailed account of his several seizures of 272 bales. (See, however, Plaintiff's Exhibit 2, annexed to Cole's Deposition, p. 112.)

We now come to the evidence of the defendant's authorization of Cabell, and his adoption and ratification of all Cabell's acts in relation to Lamar's cotton.

1. The first knowledge of Cabell that the Secretary of the Treasury, or the Treasury Department, appears to have had, was in October, 1865, after he had been for some time acting in Florida as aid to J. H. Alexander, Assistant Special Agent, Alexander being himself a delegated authority under the special Treasury agent who was stationed at Apalachicola. This *delagatio a delegato* clothed Mr. Cabell with a pretty remote authority, and he appears to have been anxious to get a better appointment. From his former occupation as blockade runner, he probably had an extensive knowledge of the places in Florida where there was cotton to be picked up. There was a good deal of such plunder, for in the last year or two of the war, it had been difficult to get cotton out of Florida, either regularly or irregularly, and when the war was actually ended, by the surrender of all the Confederate armies, the trade of the blockade runner was ended, also, and cotton was worth, in Florida, a good deal more than it had been. It would pay, therefore, for a man who knew what Cabell knew about the whereabouts of cotton, to become a Treasury agent. Accordingly, he obtained from his friend, General Foster, a recommendation to the Secretary of the Treasury, dated October 29, 1865, and started for Washington. After he arrived there, he made application to be paid for his services under the Alexander appointment in relation to certain *captured* property, but it does not very distinctly appear what. The Secretary declined to allow him what Alexander had promised, but held his claim as to *this captured property* under advisement. But the Secretary wrote to him, November 17, 1865, that in view of Alexander's stipulations and the services he, Cabell, had performed and would still be able to perform for the Department, in connection with the collection *of this* property, he desired him to return to his late field of operations, and to do all in his power to secure to the Government *the cotton named by him*, and to transport the same to a proper place of shipment at the earliest

practical moment, agreeing to make him a just and liberal compensation, and enjoining him to keep accurate accounts and a full history of all the lots of cotton so secured and delivered by him.

On the 18th of November, 1865, Cabell accepted in writing the appointment tendered to him, and then returned to Tallahassee and proceeded to remove Lamar's cotton from the plantations or warehouses where it had been left by Lamar's agents, and where he had already previously seized it.

2d. The first Government sales of any of Lamar's Florida cotton took place in New York, September 12, 1866, aggregating 268 bales (Record, pp. 140–141). The net proceeds of the two sales, $20,791.19, were paid into the Treasury. It does not appear when the balance of Lamar's Florida cotton was sold, and on the present writ of error, this is not material.

3d. On the 4th of May, 1866, the Secretary wrote to the cotton agent in New York the following letter (Record, p. 142):

"MAY 4, 1866.

"Sir,—Application is made to me by S. G. Cabell, Esq., "for the allowance to him of a portion of certain two hun- "dred and seventy-two (272) bales of cotton collected by "him, and shipped to you from Jacksonville, Fla., on the "25th of January last, and for a portion also of certain "two hundred and sixty-eight (268) bales alleged to have "been collected by him and turned over or shipped to "Reuben Ottman, Esq., assistant special agent at Jack- "sonville, Fla.

"I am not at present prepared to make a division of "either lot, but it appearing to my satisfaction that Mr. "Cabell has paid, as expenses incidental to securing the "first lot, the sum of six thousand six hundred and fifty- "four dollars ($6,654), and on the second the sum of six "thousand eight hundred and eighty-three dollars and "eighty-nine cents ($6,883.89), which amounts should "probably be reimbursed, you are hereby authorized and

" directed to pay to his attorney, Messrs. Hughes, Denver " & Peck, the two amounts named, charging the first as " an item of expense against the two hundred and seventy- " two bales above referred to, and the second as a similar " item against the shipment of cotton received by you " from Mr. Ottman, Jacksonville.

" Mr. Cabell also asks a per diem allowance as a com- " pensation for his time, personal services, and expenses in " connection with the cotton named ; for this purpose you " are also authorized and instructed to pay his attorneys, " Messrs. Hughes, Denver & Peck, the sum of three hun- " dred and fifty dollars ($350), being at the rate of five dol- " lars ($5) per day from the 17th of November last, the " date of my letter authorizing him to take action in the " premises, to the 25th of January, the date of the ship- " ment by him of the two hundred and seventy-two (272) " bales mentioned, from Jacksonville, making a charge of " this amount, also, as an item of expense against the two " hundred and seventy-two (272) bales).

" These several sums should be charged against Mr. " Cabell on your books, and will be deducted from any " portion of cotton hereafter allotted, or any allowance " made to him on a final settlement of his claim.

" You will, of course, require proper receipts for the " money thus paid, and promptly report your action here- " under to the Department.

" Very respectfully,

" H. M'Culloch,

" Secretary of the Treasury."

" Simeon Draper, Esq.,

" U. S. Cotton Agent,

" New York."

A year afterwards, May 25, 1867, the Secretary wrote the following letter to the Commissioner of Customs (p. 144):

" May 25, '7.

" Sir,—In compliance with the promise made to him in " my letter of November 17th, 1865, I have decided to pay " to Mr. Samuel G. Cabell, as full compensation for infor- " mation furnished, services performed and expenses in-

"curred by him in the collection, putting in order and "shipment to New York of certain 272 and 268 bales of "cotton, ea., brig *Lewis Clark*, and schooners *Queen of* "*the West*, *Julia Crawford*, and *R. E. Pecker*, etc., and "for information furnished and expenses incurred by him "touching the cottons captured at Thomasville, Ga., and "other cottons claimed by the Georgia Exporting and Im- "porting Company, or by G. B. Lamar, and held by Gov- "ernment as captured or abandoned property, the sum of "four thousand eight hundred and eighty-one dollars and "ten cents ($4,881.10).

"You will, therefore, please issue your requisition upon "F. E. Spinner, Esq., Treasurer, U. S., special agent, the "same to be satisfied out of any funds in his hands as "proceeds of captured and abandoned property for the "amount named, viz., $4,881.10, in favor of George Pea- "body Este, whose full power of attorney to act in the "premises is on file in this office.

"The draft, therefore, when issued, should be handed "to Mr. S. H. Kauffmann, a clerk in this office, for deliv- "ery to the payee, under such instructions relative there- "to as he may have or receive.

"Very respectfully,

"H. M'CULLOCH,

"Secretary of the Treasury.

"NATHAN SARGENT, Esq're,

"Commissioner of Customs."

4th. After the seizure of Mr. Lamar's cotton at Thomasville, in Georgia, he made some effort to recover it by civil process. This occurred in September, 1865. In December following Lamar was arrested, tried and convicted by a military commission in Georgia, on a charge of stealing or attempting to steal his own cotton; he was imprisoned and was unable to leave Savannah for several months. After his trial, imprisonment and release, namely, in February, 1866, in consequence of information received from his agent at Tallahassee (Coles) about Cabell's seizure of his Florida cotton, Mr. Lamar went to Tallahassee, and the incidents occurred there which are above stated. "In the fall of 1866," Lamar states, in his deposition, "I went to

Washington to see Mr. M'Culloch; had an interview with him; he acknowledged that his agents had taken my cotton, and showed me a list of most of it, but some bales were missing, as I had more cotton in the warehouse [at Thomasville] than they had on their list. I demanded the restoration of it from Mr. M'Culloch, and he refused, *saying I had been such a great rebel he would not give it to me, though I had furnished to him at that time a provost-marshal's certificate that I had, on the 6th day of January, 1865, taken the amnesty oath prescribed by the proclamation of President Lincoln, dated the 8th of December, 1863, whereby I was entitled to the restoration of all my property except slaves*" (Record, p. 41).

[The object of this visit was specially in relation to his Thomasville cotton and his books and papers, which had been seized and sent to the War Department or the Treasury. But the Florida cotton was also demanded by him at this and subsequent interviews. The important fact is that in the fall of 1866 the defendant knew that Lamar had taken the amnesty oath in January, 1865.]

From October, 1866, to a later period, Mr. Lamar had several interviews with Mr. M'Culloch, but always received the same refusal to restore any of his cotton or its proceeds, because he "had been a great rebel." At one of these interviews the defendant "agreed to refer the matter of the Florida cotton to a Mr. Eames, a lawyer" (Record, p. 57). [We understand by this that the defendant agreed to take the opinion of the late Charles Eames, Esq., of Washington, on the whole matter of the Florida cotton, and his, the Secretary's, power to order restitution of the proceeds. Some part of the Florida cotton, 272 bales, had been sold by the cotton agent in New York, and the proceeds paid into the Treasury in September, 1866. Mr. Eames' opinion was given in writing, and bears date December 8, 1866. In it he describes himself as "Special Counsel of the Treasury Department," and his opinion was given "in the matter of the claims of G. B. Lamar and others to certain cotton held by the Treasury Department as captured and confiscable (*sic*) property" (Record, p. 118, *et seq.*). Mr. Eames begins by admitting the follow-

ing allegations of fact, as sustained by the proofs submitted to him:

"But it is the claim for the cotton seized in Florida by "the Treasury agent in the summer of 1865 which the "counsel for Mr. Lamar and for the two New York cor- "porations evidently regard as the strongest branch of "their case. This claim is placed in the papers upon three "distinct allegations of fact, each of which may, in my "judgment, be admitted to be sustained by the proofs. "These allegations are:

"FIRST.—That there was no military capture of these "Florida cottons.

"SECOND.—That these cottons were purchased by Mr. "Lamar, or by his agent, at the close of the year 1862, "and in the early part of the year 1863, in their individual "names and for their private account, and that the pur- "chase-money for them was furnished by Mr. Lamar, and "duly paid, and that the cottons were deposited, subject "to the order of the purchaser.

"THIRD.—That on the 6th of January, 1865, several "months before the seizure of the cotton, Mr. Lamar took, "and has since kept, the amnesty oath, as prescribed in "the proclamation of President Lincoln of the 8th of De- "cember, 1863.

"From these facts, thus alleged, Mr. Lamar and his "counsel deduce the conclusion, as matter of law, that "these Florida cottons were, at the time of their seizure "by the Treasury agent, Mr. Lamar's property; and that "the amnesty oath, as taken by him, cured all defects in "his title to the property, if any previously existed by "reason of his participation in the rebellion, and operated "to restore to him, to all legal intents and purposes, his "full rights of ownership. The correctness of these legal "conclusions is, in my judgment, the main question in the "case before you."

Upon these admissions and assumptions, Mr. Eames proceeds to say that he should advise the Department that the seizure was wholly unauthorized by law or by instruc-

tions; and, therefore, from the beginning, utterly null and void, and that to correct and control it in all its operations was then within the lawful sphere of the Department.

Nevertheless, he goes on to argue that there are other grounds, irrespective of those covered by the above stated facts and notwithstanding those facts, for ratifying the seizure and refusing to restore the property or its proceeds. These grounds are, as he puts them :

FIRST.—That Lamar, when he purchased this cotton in 1862 and 1863, was also engaged in organizing, preparing and setting on foot a blockade running expedition, under the name and style of the Exporting and Importing Company of Georgia, of which he was president, principal stockholder and manager.

SECOND.—That this Florida cotton was a remnant of a much larger quantity, purchased and held by Lamar for the purpose of selling it to the blockade running company, to be run out of the country in aid of the rebellion.

[So far as these facts, if true, would constitute a defense to the present action, they were matters to be put to the jury under proper instructions of law.]

Mr. Eames' legal conclusions are that this *intent* affected the property with an ineradicable taint; that the purchase was, by reason of the unlawful purpose for which Lamar destined the property, null and void; that it gave no title to Lamar against the United States; that both vendor and vendee acted in aid of the rebellion, and that the cotton was "forfeited" to the United States, and was rightfully seized and held *by the Treasury agent*. He then proceeds to argue the "forfeiture" and the rightfulness of the seizure and detention, as follows: Under the first three sections of the Act of August 6, 1861, there was, he says, a two-fold operation by which such property could be dealt with. It could be condemned as prize of war when captured and libelled as such, or in case there was no such capture, it was subject to "municipal forfeiture" whenever and by whomsoever *seized* and *proceeded against*. He then goes so far in regard to this supposed "forfeiture"

as to assert that if the claimant should even obtain a favorable judgment in the Court of Claims, it might still be the duty of the Treasury Department, before restoring the proceeds of the cotton, to have *them* duly libelled for forfeiture under the Act of August 6, 1861.

The truth is, that the Act of August 6, 1861 (12 Stat. at Large, 319), was primarily designed to be a statute of *prize and capture*, and in respect to what Mr. Eames denominates "municipal forfeiture," the law was not very skillfully drawn. The act comprehended, undoubtedly, property purchased or acquired, sold or given, with intent to aid an insurrection against the United States, or knowingly suffering the same to be so used or employed, or knowingly so employing the same, in places declared by proclamation of the President to be the scene of such insurrection. But Cabell's seizure of this cotton, and the defendant's previous authorization and subsequent adoption and ratification of that seizure, did not proceed upon any pretense that it was property confiscable by municipal forfeiture under the Act of August 6, 1861. Neither the cotton nor its proceeds were ever proceeded against under that act. Throughout the 2d, 3d, 4th and 5th pleas filed in the present action, the defense is rested upon an execution or administration of the Abandoned and Captured Property Acts, and if the 6th plea is to be construed to rest another defense upon the allegation that the property was "liable to seizure and use by the United States and its officers," and "was so seized and used by and in "behalf of the United States," because of the plaintiff's continuous participation in the rebellion after the President's proclamation of July 25, 1862, how is it that this defense is available in the present action, when no proceedings to enforce such forfeiture were ever instituted? And how is it that this issue under the 6th plea, and the replication and rejoinder, making a mixed question of law and fact to be put to the jury under proper instructions of law, was not put to them at the trial? It was not so put, because the jury were peremptorily directed to return a verdict for the defendant upon the ground that the plaintiff's declaration and his evidence made a case for the exclusive jurisdiction of the Court of Claims under the

Abandoned and Captured Property Acts, and prevented the seizure and removal of the property from being a trespass. The correctness of this ruling is, we suppose, the sole question open in this Court on the present writ of error. The issue made by the 6th plea, and the replication thereto, and the rejoinder to the replication must stand for a new trial.

Another of Mr. Eames's erroneous grounds is, that under the Confiscation Act of July 17, 1862, section 5, this cotton was liable to seizure and confiscation, because Mr. Lamar purchased it and held it for the purpose of aiding and abetting the rebellion, which *intent* fixed upon *him* the continuing character of an aider and abettor of the rebellion, "without any overt act." But it is sufficient to say about this, that the cotton never was seized or proceeded against under that statute, and that the continuing character of a rebel is a figment of Mr. Eames's. Six months before the seizure Lamar had taken the amnesty oath.

Another of Mr. Eames's erroneous grounds is, that this cotton was "abandoned" property, because the owner, although not engaged in armed rebellion, must be held, by reason of the unlawful intent with which he purchased it, to have voluntarily separated and absented himself from it, and to have left it to the operation of the Confiscation Act! This is too absurd for serious refutation. Mr. Eames had previously assumed and admitted that the cotton was deposited subject to the orders of the purchaser, and there was no evidence before him that a single bale of it had ever been out of the possession of Lamar's bailees before Cabell seized it. "Abandoned" property, and "voluntary absence" of the owner, cannot be made out of such fine-spun constructive absence.

But the most remarkable part of Mr. Eames's advice to the Secretary is that part of his opinion in which he denies all effect whatever to the amnesty oath taken by Mr. Lamar January 6, 1865, six months before the seizure, upon the extraordinary ground that the amnesty oath did not and could not purge the property of the taint of previous "forfeitures." By the same token, if Mr. Lamar, or any other citizen of Savannah, had, during a part of the

war, kept open house for the entertainment of Confederate officers, using his furniture and his table for their accommodation, and thus materially aiding the rebellion, the entire contents of his house and the house itself would have contracted an ineradicable taint, from which the amnesty oath, although taken seasonably and six months before any seizure, and always kept, could not relieve them. We shall not stop to comment on this crude doctrine, so contrary to all the subsequent decisions of this Court. Mr. Eames' advice to the Secretary was, not to restore even the proceeds of the cotton, although he admits that the Secretary had the power to do so, on the assumption that Lamar was the owner.

Mr. Eames concludes his opinion with recommending *a settlement of Cabell's claim for compensation for seizing the cotton*, &c.; which, of course, would be a disposition and appropriation *pro tanto* of the property, under the theory of its *capture*, and to that extent an entire loss to the owner. Upon the theory that the property was seized by Cabell for forfeiture and confiscation without previous capture, we do not know that the Secretary had any authority to allow and pay him a compensation out of the proceeds. That was a matter for the Court in which forfeiture proceedings might be instituted.

We introduced this opinion of Mr. Eames, or so much of it as we read at the trial, solely for the purpose of showing: That the defendant knew as early at least as December 8, 1866, *and had then long known*, that this cotton was Lamar's property, and that Lamar had taken the amnesty oath January 6, 1865; that the cotton was at the time of the seizure and had long been, left by Lamar in the possession and custody of his bailees, and under the care of his agents, and that no part of it had ever been transferred by Lamar to any one else to aid the rebellion, or for any other purpose; and that there had never been any military capture of it. But assuming, nevertheless, that the facts constituted a case to be dealt with under the statutes relating to captured or abandoned property, the Secretary proceeded to give a final ratification to the seizure, by adjusting and paying Cabell a compensation, as if he had collected captured or abandoned property from the hands of the military authorities of the United States.

It appears from Coles' deposition, that on the 30th of November, 1865, which was after Cabell had been in Washington, Cabell called upon Coles, as Lamar's agent, at Tallahassee, and informed him that he, Cabell, had an order from the Treasury Department to forward all Lamar's cotton in Florida to S. Draper, in New York, and also an order from General Newton (Record, p. 92, Direct-Interrogatory 71; Plaintiff's Exhibit 2, Coles' Deposition, Record, p. 112). Cabell did not exhibit either order to Coles, but Coles believed him on his word (Record, p. 109). As to any order from General Newton, we have already suggested what, if there was any order, it must have been (see Coles' Cross-examination, (Record, p. 109). If Cabell had the order from the Treasury Department which he said he had, and did not lie about it, it must have been just what he made Coles believe that it was. We contend that in the present action Cabell's declaration to Coles about this order is evidence against the defendant, because Cabell was the defendant's agent, acting under the defendant's instructions of November, 17, 1865. Cabell was a public officer, acting under the Secretary of the Treasury, so far as he acted within the law. So far as he acted outside of the law and under instructions which the defendant could not lawfully give, he was the defendant's personal agent. Whether Cabell, while he was in Washington, said or wrote to the Secretary or to any officer of the Department, that he had already seized all of Lamar's cotton in Florida that he could lay his hands on, there can be no doubt that the order which Cabell claimed to have received, was given to him, if at all, in Washington, and that it fixed the "cotton" which was the subject of the Secretary's letter of November 17, 1865, and Cabell's answer of November 18, as all Lamar's cotton in Florida. In the Secretary's letter of November 17, the cotton which he authorized Cabell to "secure to the Government and to transport to a place of shipment at the earliest practicable day," was the "*cotton named by you*" (Cabell). This cotton had been named by Cabell either orally or in his communication of November 16, as Lamar's cotton, in Florida. From the tenor of the

Secretary's letter of November 17, it could not have been the *captured property* on which Cabell was then claiming compensation for services which he had rendered in regard to *it*, but it was manifestly *cotton named by Cabell*, and to secure which for the Government, the Secretary gave Cabell a new and special authority. "In view, however," said the Secretary, "of the stipulations made by Mr. Alexander and services you have performed, and will still be able to perform for the Department in connection with the *collection of this property* [the captured property], I desire that you return to your late field of operations and do all in your power *to secure to the Government* the cotton named by you, and I will agree to make you such an allowance as compensation," &c. In regard to the property referred to in the Secretary's letter, *as already captured*, all the further service that Cabell could render would be to collect it from the military authorities and forward it, and Cabell's compensation in regard to this property the Secretary then held under advisement. But to secure to the Government the cotton named by Cabell, either orally or in his letter of November 16, was another and a distinct employment, for which the Secretary agreed to make, and afterwards did make, a *very* "liberal compensation." This was "all Lamar's cotton in Florida," if Cabell told the truth to Coles. Not a bale of Lamar's cotton in Florida had been captured. The theory on which the Secretary was then acting was *that in Lamar's case*, a treasury agent could be authorized to seize all his cotton in Florida, and cause it to be transported to New York. It does not even appear that the "captured property" referred to in the Secretary's letter of November 17, was cotton. On the contrary, it would seem from Cabell's answer of November 18, that it, or some of it, was "cedar timber, and cattle." At all events, it appears distinctly from Cabell's answer, that his new employment related to cotton *named by him in his communication of November* 16, and he asks for instructions how he is to pay the expenses on *this cotton* to a proper place of shipment. If he did not lie to Coles, this was "all Lamar's cotton in Florida."

If the issues in this case had not been taken from the

jury by the peremptory direction of the presiding judge to return a verdict for the defendant, one of the questions of fact which the plaintiff would have had a right to put to the jury, showing the defendant's liability in this personal action of trover, would have been whether the defendant did not, in November, 1865, authorize Cabell to take, without any previous military capture or seizure, all of Lamar's cotton in Florida, and to ship it to New York. On this writ of error, in determining the correctness of the judge's ruling, we contend that it must be taken by this Court, on the plaintiff's evidence, that this authorization was then given, that it was carried out by Cabell, and that his action was subsequently ratified by the defendant, in the manner above stated.

Cabell's Compensation.

It appears in the Record that in May, 1866, six months before Mr. Eames' opinion was given, the Secretary partially adjusted Cabell's claim, by awarding him $6,654, as his expenses in collecting and forwarding to Jacksonville and thence to New York 272 bales of Lamar's cotton, and $6,883.89 as his expenses in collecting and forwarding to Ottman at Jacksonville 286 bales of cotton, in which we claim was included the balance of Lamar's 426 bales, namely, 154 bales. At the same time he allowed Cabell a *per diem* compensation of $350, at $5 per day, from November 17, 1865, to January 25, 1866. The aggregate of what Cabell was then allowed and paid was $13,887.89, and this amount was charged upon the proceeds of Lamar's cotton. Considering the fact that Cabell used army wagons to haul some of this cotton into Tallahassee, for which, of course, he paid nothing, and that some of it was put on the cars of the Pensacola and Georgia Railroad at Monticello, and thence forwarded by rail to Jacksonville, $13,887.89 was, indeed, a "liberal" compensation (Record, p. 142, *et seq.*). On the 25th of May, 1867, the Secretary allowed Cabell, on final settlement, a further sum of $4,881.10, as full compensation for information furnished, services performed and expenses in-

curred by him on Lamar's Florida cotton, and on Lamar's Georgia cotton, classing them both as captured *or* abandoned property (Record, p. 144, *et seq.*). Cabell's attorney gave a receipt for this last payment in full on the 27th of May, 1867 (Record, p. 146). These payments were made solely on the assumption that Lamar's Florida cotton, like that taken at Thomasville, in Georgia, was captured property, or if not captured, that it was abandoned property; the Georgia cotton being taken in June, 1865, under circumstances which made a clear case of military capture, and the Florida cotton being taken in September, October and November, 1865, and some of it *seized* earlier, but without any military capture or seizure whatever, and without any abandonment.

The Intent and Operation of the Captured and Abandoned Property Acts.

The Acts of March 12, 1863, and July 2, 1864, on their face, were manifestly intended to introduce and carry out in the prosecution of the Civil War a belligerent right on the part of the United States, which the law of nations did not practically recognize in international wars, namely, a right to take military possession—to make capture—of private property on land within the territory of the enemy; all the inhabitants of the insurgent States being deemed, for the time, public enemies of the United States, without distinction. As the war progressed, it was found that there was likely to be a great deal of private property falling within the reach of the United States military forces, in two predicaments; property from which the owner would be absent, and property which, whether the owner were absent or present, the Government of the United States, as a belligerent, might choose to treat as subject to capture in the war.

To provide a system which would cover property in either of these predicaments, was the purpose of the above cited statutes, the last of which was enacted about fifteen months before the seizure of Mr. Lamar's Florida cotton. The Act of March 12, 1863, did not specifically define the

meaning of the terms "abandoned and captured" property; but by the Act of July 2, 1864, "abandoned" property was defined to be all property, real or personal, when the lawful owner thereof shall be voluntarily absent therefrom, and *engaged* [at the time of seizure] either in arms or otherwise, in aiding or encouraging the rebellion." Prior to February 2, 1884, the Secretary of the Treasury, acting under authority given to him by law, had defined "captured" property as "property which has been *seized or taken from hostile possession by the military or naval forces of the United States:*" a definition subsequestly approved by this Court in Padelford's Case, 9 Wallace, 537. In order to carry out the purpose of Congress, the two Acts, taken together, provided for the appointment by the Secretary of the Treasury of certain civil agents to receive and collect all abandoned and captured property in the insurgent States, and required the military and naval authorities who had taken such property into their possession, or when such property had come within their control, *to give notice thereof to some Treasury agent, to turn the same over to him without delay, and to take his receipt therefor, on penalty, in case of refusal or neglect so to do, of trial by a court martial, and punishment.* But mindful that it was acting as the Legislature of a constitutional sovereign as well as exercising belligerent powers, and that the property of loyal as well as disloyal persons might be taken into the possession of the military authorities during the prosecution of hostilities, Congress, by these two Acts, completed the system so as to enable any loyal person to obtain restitution of the proceeds of his property, by application to the Court of Claims, and by proving his ownership, and that he had never given aid or comfort to the rebellion. So that, after the enactment of the Act of July 2, 1864, and in the autumn of 1865, when Lamar's Florida cotton was seized *from his possession* by a civil agent of the Treasury, it was perfectly plain that a civil agent of the Treasury could lawfully have nothing to do with captured property, excepting to receive it from some military or naval authority of the United States, to give a receipt for it, and then to forward it as the Secretary of the Treasury might

direct; and it was equally plain that the Secretary of the Treasury could not lawfully confer on a civil agent any other authority or power. To give an order or authority, written or verbal, to a civil agent of the Treasury, to forward all of a certain person's property in a certain State to New York, whether that person was loyal or disloyal, whether the war was flagrant or was ended, without instructing the agent to receive it from some military or naval authority of the United States, and to give a receipt for it to that authority as abandoned or captured property which had come into the possession or control of such military or naval power, was an unlawful act. If the civil agent received and executed such an order, or if he so acted, and his action was afterwards adopted and ratified by the Secretary of the Treasury, and the owner thereby lost his property, it cannot be pretended that there was an execution of the Captured and Abandoned Property Acts, but the whole affair was a naked trespass at common law. It would have been so at any period of the war. *A fortiori*, it was so in the autumn of 1865, when the war was completely ended, when the military forces were making no captures, when there could be no presumption that any property situated anywhere was abandoned by the owner, and when the owner had six months before taken the Amnesty oath. And it is perfectly obvious that all this was understood at the Treasury Department, just as we now put it, in December, 1866, when the Secretary of the Treasury was advised by the special counsel that this cotton, or its proceeds, could not be held as captured property, but that they could be held as property tainted with previous forfeiture to the United States on account of the intent with which the cotton was purchased, and liable to proceedings *in rem* for such forfeiture, notwithstanding that the cotton was never seized and removed for that cause, and no proceedings for such forfeiture were ever instituted against the cotton or its proceeds. If there had been any purpose on the part of the Secretary to have this cotton seized for forfeiture as property purchased and held to aid the rebellion, why was not Cabell instructed accordingly? and why was not some step taken to make that purpose a matter of record in the Department? If

Cabell had been so instructed his seizure would not have been a seizure by a civil agent of the Treasury acting under the Abandoned and Captured Property Acts, but it would be like the seizure of any person who had been delegated especially to make it preparatory to proceedings *in rem* for some supposed forfeiture. This is what Mr. Eames tried to make it long after the fact. All the facts show that Cabell was authorized and instructed to take this cotton wherever he could find it, and all the justification set up by three of the pleas in this action is a justification under the Abandoned and Captured Property Acts, which are supposed to have made this case one for the exclusive jurisdiction of the Court of Claims. The case does not embrace the first and most essential element of that jurisdiction, namely, capture by the military power, transfer from that power to a civil agent, and a receipt from him of the property.

We have made these observations upon what was from the first and all along apparent to every officer of the Treasury on the face of the Abandoned and Captured Property Acts, even before the decisions of this Court hereinafter cited, because the defense of this action of trover turns upon the justification set up in certain pleas under those acts. We now cite the following cases as establishing the necessity of actual capture by the military forces; that constructive capture, without actual military seizure of the specific property, and resulting, or supposed to result, from military possession of the district, county, city or town where the property was situated, is not capture under the acts.

United States *vs.* Padelford, 9 Wallace, 537. decided in 1869.

United States *vs.* Klein, 13 Wallace, 136, decided in 1871.

Lamar *vs.* Brown *et al.*, 82 U. S., 187, decided in 1875.

In the last case the previous actual possesion of the property by the military authorities was cleary shown, the transfer to the civil agent of the Treasury and his receipt were distincly proved, and it was held by this Court that

the regularity of the proceedings prevented the acts of the civil agent from being a trespass, and gave jurisdiction to the Court of Claims. All of these facts were known to Mr. Lamar's counsel when the action of trespass was brought against the Treasury agents for taking his Thomasville cotton, but it was supposed that his taking of the Amnesty oath had exempted his property from *military capture*. This Court held that it had not. The present action now presents the question whether his previous taking of the Amnesty oath did not prevent his property everywhere from seizure by a civil agent of the Treasury, acting under the orders of the Secretary of the Treasury, without any military capture whatever, for any cause whatever that is within the scope of the pleas filed in this action.

Lamar's Amnesty Oath.

It is important to fix the time when the defendant first knew that Mr. Lamar had taken the Amnesty Oath. He took it January 6, 1865, before a provost marshal; and he testified in his deposition that he furnished the defendant personally, in the fall of 1866, with the provost marshal's certificate. From the time when he took the oath, which was six months before Cabell's seizure of his Florida cotton, he was entitled to the full benefit of it. But there are facts which we think affect the defendant with a much earlier knowledge that Lamar had taken the oath. It was the duty of the provost-marshal, under the President's proclamation of December 8, 1863, to register it for permanent presentation, and under the proclamation of March 25, 1864, to give a certificate of it to the person taking it, and to transmit the original record, at as early a day as might be convenient, to the State Department, where it would be deposited and remain in the archives of the Government. The Secretary of State was to keep a register of the oaths, and on application in proper cases, to issue certificates thereof. (Statutes at Large, Vol. 13, pp. 737–739; *ibid.*, p. 741.) The presump- of law is that the oath of Mr. Lamar was so registered by the provost-marshal, forwarded to the State Department

and there registered. Now if at the time when Cabell, by his communication of November 16, 1865, to the Secretary of of the Treasury, procured authority to seize all Lamar's cotton in Florida, as he asserted to Coles, and as the Secretary's letter to Cabell of November 17, and Cabell's reply of the 18th, tend strongly to show, the Secretary did not personally know that Lamar had taken the oath, and did not make, or cause to be made, at the State Department, any inquiry to ascertain whether he had or not, the circumstances are most remarkable. Lamar was one of the most prominent men in civil life in the State of Georgia, and *had been* a very efficient supporter of the Confederate Government. It is incredible that it was not known to every principal officer of the Treasury that he had abandoned the Confederate cause in January, 1865, before the surrender of General Lee's forces and the collapse of the Confederate Government. It is true that this Court cannot draw inferences of fact, and that the evidence by the plaintiff at the trial shows positively no earlier actual knowledge on the part of the defendant that Lamar had taken the oath, than the autumn of 1866. But at that time it was in the power of the defendant to undo all that Cabell had done, at least so far as to restore the proceeds of Lamar's Florida cotton, and to aid him in getting his books and papers. Both were refused, as Lamar has sworn, because he "*had been* a great rebel," a statement of the defendant's assigned reason for refusal which stands uncontradicted by any evidence at the trial. When in December, 1867, Mr. Eames advised the Secretary not to restore either cotton or proceeds, it was an admitted fact that Lamar had taken the oath before Cabell's seizure, and had kept it. When, at an earlier period, namely, May, 1866, the Secretary paid a part of the proceeds of Lamar's cotton to Cabell for his services, the Secretary might have learned, if he had inquired, that this "great rebel" had renounced the Confederacy in January, 1865, and had taken the oath prescribed by President Lincoln's two proclamations. But this was deemed, most erroneously and fatally deemed, to be a matter of no consequence. The purpose then was to find a ground for carrying out and ratifying the seizure of all

Lamar's cotton in Florida, although it could not be treated as captured property; and that ground, suggested by Mr. Eames more than two years after the seizure, was that the intent, with which he assumed that Lamar purchased the property, affected *him* with "the continuing character of a rebel," and affected his *property* with an inextinguishable forfeiture, both as abandoned property and as confiscable property, notwithstanding the amnesty oath. We might well exclaim, Shade of Abraham Lincoln! did you dream of such an effect of your proclamations, when you promised to all who should take and keep the oath which you beneficently prescribed, restitution of all rights of property excepting property in slaves?

Effect of the Amnesty Oath.

There can not be two opinions about this. The proclamation of December 8, 1863, in and of itself granted a full pardon to all persons who had, directly or by implication, participated in the existing rebellion, with certain exceptions, none of which ever applied to Mr. Lamar, with restoration of all rights of property except as to slaves, and in property cases where rights of third parties had intervened, on condition of their taking and keeping the prescribed oath. The following cases have established beyond denial that the pardon purged the offender of all personal guilt and incapacity, and made him a new man; and likewise purged his property of all previous causes of forfeiture not arising out of any actual use to which he had in fact put it and not enforced before the time of the pardon.

(1866.) Ex parte Garland, 4 Wallace, 374.
(1867.) Amstrong's Foundry, 6 Wallace, 769.
(1869.) United States *vs.* Padelford, 9 Wallace, 517.
(1871.) United States *vs.* Klein, 13 Wallace, 136.
(1871.) Armstrong's Case, 13 Wallace, 155.

That a Secretary of the Treasury could, in the autumn of 1865, lawfully authorize an agent to seize and remove from one of the Southern States the property of a person who had taken the amnesty oath, which had not been captured or abandoned, and had not been anywhere seized or proceeded against for any cause of forfeiture before the oath and the pardon consequent upon taking it, without committing a trespass, is a proposition that cannot be maintained.

That a Secretary of the Treasury could, under the same circumstances, lawfully appropriate and use a portion of such property to pay the agent's services or expenses, without ratifying the trespass *ab initio*, or treat the property or its proceeds as a case where the right of a third party had intervened, we submit are propositions equally untenable. The seizure was unlawful, the removal was unlawful, the sale was unlawful. Cabell could not have, and the Secretary could not give him, a lawful title to any part of Lamar's cotton or its proceeds. Whether Cabell is to be regarded as an informer or as seizing sgent, or both, he was not a third person with intervening rights in Lamar's property, for he never had, and the Secretary could not give him, a right to touch it.

Ruling of the Court below at the trial and Assignment of Errors.

The bill of exceptions will be found at p. 31 to p. 151 of the printed record.

The record, after reciting the plaintiff's evidence, proceeds thus :

" And thereupon the plaintiff's counsel rested his case.

" The defendant's counsel then moved the Court to " direct the jury to return a verdict for the defendant on " the plaintiff's proofs.

" That the taking by Cabell was lawful, because it was " a capture; that the taking was lawful, because the prop- " erty was abandoned; that the action of the defendant

" was such as does not subject him to an action for " damages, because, under the general principles of law, " the capture or taking was one for which there is a " remedy only by application to the sovereign; that the " defendant is not liable, because he was acting in the " exercise of his discretion as a public officer; that what- " ever the defendant did was done by virtue of or under " color of the Captured and Abandoned Property Acts, and " he is protected by them, by the two years' limitation " statute, by the Act of 1868, and by the original intent " of those acts.

" And after hearing the defendant's counsel in support " of his motion, and the counsel for the plaintiff in op- " position thereto, and the counsel for the defendant " in reply, the Court directed the jury to find a verdict for " the defendant, upon the ground that the Court of " Claims had exclusive jurisdiction of the cause of action " set forth in the plaintiff's declaration and in the evi- " dence, as given thereunder, by virtue of the statute of " March 12, 1863, and the statutes passed amendatory " thereof, and before the rendering and recording to the " verdict, Mr. Curtis, of counsel for the plaintiff, excepted " to the ruling of the Court in directing the jury to find a " verdict for the defendant.

" And thereupon the jury found a verdict for the de- " fendant, which was entered on the minutes of the " Court ; and, on motion of Mr. Curtis, it was ordered " that the plaintiff has a stay of proceedings on said ver- " dict for forty-five days, within which to prepare and " serve a bill of exceptions therein.

" And forasmuch as the exceptions, matters and things " aforesaid would not otherwise appear by the record, I " have set my hand to this bill of exceptions, which is " thereby allowed, and it is ordered, that this bill of ex- " ceptions be filed as a part of the record with like force " and effect as if it had been made up in form, signed and " placed before the case was given to the jury; and it is " further ordered, that at any time before the entry of " judgment the plaintiff may have leave to move for a

" new trial upon this bill of exceptions as upon a case
" made and settled.

" Witness my hand, this 26th day of Jan'y, 1885.

" N. SHIPMAN, Judge. [L. S.]

" Supreme Court of the United States.

" G. DE ROSSET LAMAR, as Executor, &c., Plaintiff in
" Error,

vs.

" HUGH MCCULLOCH, Defendant in Error.

" Afterwards, to wit, on the second Monday of October,
" 1885, in this same term, before the Justices of the
" Supreme Court of the United States, at the Capitol, in
" the City of Washington, comes the said G. De Rosset
" Lamar, executor, plaintiff in error, and says that in the
" record and proceedings aforesaid there is manifest
" error in this, to wit :

" 1. That the Court erred in overruling the several ex-
" ceptions noted in the record herein on behalf of the
" plaintiff, to the admission or rejection of evidence,
" whereas the said Court should have severally sustained
" said exceptions, and the plaintiff assigns said several
" rulings of the Court as separate errors.

" 2. That the Court erred in directing the jury to find a
" verdict for the defendant upon the ground that the
" Court of Claims had exclusive jurisdiction of the cause
" of action set forth in the plaintiff's declaration and in
" the evidence as given thereunder, by virtue of the stat-
" ute of March 12, 1863, and the statutes passed amenda-
" tory thereof, whereas said direction was contrary to the
" law.

" 3. That the Court erred in overruling the exception
" of counsel for the plaintiff to the ruling of the Court, in
" directing the jury to find a verdict for the defendant,
" whereas said ruling was contrary to the law, and said
" exception should have been sustained.

" 4. That by the record aforesaid it appears that the
" judgment aforesaid, in form aforesaid given was given
" for the said defendant in error, whereas by the law of

" the land the said judgment ought to have been given
" for the said plaintiff against the said defendant.

" And the said plaintiff prays that the judgment afore-
" said for the errors aforesaid, and other errors in the
" record and proceedings aforesaid, may be reversed,
" annulled, and altogether held for nothing, and that the
" said plaintiff may be restored to all things which he has
" lost by occasion of said judgment.

" GEORGE TICKNOR CURTIS,
" For Plaintiff in Error.

From this it appears that the plaintiff, at the trial, took some exceptions to the rulings of the Court on the rejection of evidence, but on this writ of error, these are not very material. The substantial and important error is the peremptory direction to the jury to find a verdict for the defendant upon the ground that the Court of Claims had exclusive jurisdiction of the cause of action set forth in the plaintiff's declaration, and in his evidence given thereunder, by virtue of the statute of March 12, 1863, and the statutes amendatory thereof. All other issues in the case made by the pleadings, including the issues of fact on the statutes of limitations pleaded, were thus taken from the jury, and, as we suppose, are not open on this writ of error. But if they are now open here, they will be considered at the close of this brief.

We now make the following

POINTS OF LAW.

I.

The action being for a personal tort, it was error for the presiding judge to rule, that the case made by the plaintiff's declaration, and supported by his evidence, was one for the exclusive jurisdiction of the Court of Claims, because the foundation and indispensable element of the Court of Claims' jurisdiction, namely, military capture or seizure, transfer of the property from the military author-

ity to the civil agent, and his receipt therefor, were utterly wanting. Not only did this appear negatively, but it appeared positively that the civil agent, if he was, in fact, a public officer, made himself all the seizure that ever was made, was not instructed to and did not collect the property from the hands of any military authority, but took it from Lamar's bailees and agents, under circumstances which strongly indicate that he had obtained from the defendant authority to take all Lamar's cotton in Florida, and remove it to a place of shipment at the earliest practicable day, without regard to the possession in which he might find it. The only restraint imposed upon, or special direction given to him was, to keep accurate accounts and a full history of all the facts connected with all lots of cotton that he might secure and deliver. On the 11th of December, 1865, Cabell wrote to the defendant that he had already shipped to Jacksonville, for shipment to New York, 177 bales of cotton, "formerly owned by the Exporting and Importing Company," and was "engaged in preparing the balance for shipment." He said nothing about the places where he found this cotton, or from whose custody he removed it (Record, p. 120). On the 29th of December, 1866, the defendant called Cabell's attention to the special direction given in his letter of November 17th, and this produced Cabell's report of February 17, 1866. This report made it plain to the defendant that the cotton was not taken from or receipted for, to any military authority (Record, pp. 130, 132). But a large part of the cotton had then gone forward to New York; and in May, 1866, the defendant proceeded to adjust and pay a part of Cabell's claim for compensation, charging the allowance upon Lamar's cotton, with full knowledge that Cabell had seized it himself, and did not collect it from any of the military forces of the United States. That these facts, or any or all of them, or all the facts in the Record taken together, constituted a case for the exclusive jurisdiction of the Court of Claims, or for any jurisdiction but that of a Court of common law in an action by the owner of the cotton for a personal tort, cannot be maintained.

II.

It was error in the presiding judge to rule as he did, because, on the fact that Lamar had taken the amnesty oath six months before there was any seizure, and on the evidence which proved the defendant's knowledge of that fact before he finally adjusted and paid Cabell a large part of the proceeds of Lamar's cotton, thereby ratifying and confirming the original seizure and removal. The plaintiff had an absolute right to have the verdict of the jury taken on the effect of the amnesty oath, under an instruction that the plaintiff's property was everywhere exempt from such a seizure as that made by Cabell under authorization derived from the defendant. The ruling of the presiding judge not only caused the inconvenience of and necessity for a new trial, but it shut out a fact which of itself lay at the foundation of the personal action of tort, inasmuch as it showed, under all the circumstances, that the original seizure was a gross wrong, and that its ratification and adoption by the defendant were made with knowledge that Lamar had taken the oath.

III.

It was error for the presiding judge to rule as he did, because there was no evidence in the case that the cotton was ever the property of the Exporting or Importing Company, or was purchased and held by Lamar with intent to transfer it to that company, or that it was any one's property but his. On the theory that *it wight turn out* to have been the property of that company, or was purchased and held by Lamar to aid the rebellon, the foundation of the Court of Claims' jurisdiction was entirely wanting on the facts proved at the trial, because those facts showed that whoever was the owner, or with whatever intent the property was purchased, there had been no military capture, seizure, custody, possession or control. The Court of Claims

could not take jurisdiction of a case where the seizure, custody and control had been that of a civil agent alone, from beginning to end. Nor could it take jurisdiction of a case upon the theory that the property was affected with a taint of previous "forfeiture," and proceed to adjudicate whether the proceeds in the Treasury should or should not be awarded to any one who might claim them. Nor could Lamar successfully invoke the jurisdiction of the Court of Claims; for the very first step that he would have to take would be to show that he lost the possession of the property by an act of the civil agent of the defendant, and in no other way, and thus he would have proved himself right out of the jurisdiction of that Court, however clearly he might have proved his ownership, his amnesty oath and his subsequent loyalty.

IV.

It was error in the presiding judge to rule as he did, because, although the property of Lamar in Florida *may have been liable to capture* by the Federal forces in September, October and November, 1865—so as to have made a case for the jurisdiction of the Court of Claims, and to have made him remediless save in that Court—it was not liable to be taken by any civil agent of the Treasury without such capture, or to be collected by such agent, even if there had been a capture. On the 24th of June, 1865, President Johnson issued his proclamation, declaring as follows:

"By the President of the United States of America.
"A Proclamation.

"Whereas, it has been the desire of the General Govern-
"ment of the United States to restore unrestricted com-
"mercial intercourse between and in the several States as
"soon as the same could be safely done, in view of resist-
"ance to the authority of of the United States by combi-

" nations of armed insurgents ; and whereas, that desire " has been shown in my proclamations of the twenty-ninth " of April, one thousand eight hundred and sixty-five; the " thirteenth of June, one thousand eight hundred and " sixty-five, and the twenty-third of June, one thousand " eight hundred and sixty-five; and whereas, it now seems " expedient and proper to remove restrictions upon inter- " nal, domestic and coastwise trade and commercial inter- " course between and within the States and Territories west " of the Mississippi River ;

" Now, therefore, be it known that I, Andrew Johnson, " President of the United States, do hereby declare that " all restrictions upon internal, domestic and coastwise " intercourse and trade, and upon the purchase and re- " moval of products of States and parts of States and Terri- " tories heretofore declared in insurrection, lying west of the " Mississippi River (excepting only those relating to prop- " erty heretofore purchased by the agents, or captured by " or surrendered to the forces of the United States, and " to the transportation thereto or therein, on private ac- " count, of arms, ammunition, all articles from which am- " munition is made, gray uniforms and gray cloth), are an- " nulled ; and I do hereby direct that they be forthwith re- " moved ; and also that the commerce of such States and " parts of States shall be conducted under the supervision " of the regularly appointed officers of the customs [who] " shall receive any captured and abandoned property that " may be turned over to them, under the law, by the mili- " tary or naval forces of the United States, and dispose of " the same in accordance with instructions on the subject, " issued by the Secretary of the Treasury.

" In testimony whereof I have hereunto set my hand " and caused the seal of the United States to be affixed.

" Done at the City of Washington, this twenty-fourth " pay of June, in the year of our Lord one thousand eight " hundred and sixty-five, and of the Independence of the " United Staies of America the eighty ninth.

" [L. S.] ANDREW JOHNSON.

" By the President :

" W. HUNTER,

" Acting Secretary of State."

Three days after this proclamation was issued, namely on the 27th of June, 1865, the following Treasury Circular [read in evidence by the plaintiff's counsel at the trial of this action, Record p. 149] was issued:

"CIRCULAR LETTER OF INSTRUCTION TO OFFICERS OF THE "TREASURY DEPARTMENT, RELATIVE TO COMMERCIAL "INTERCUORSE, CAPTURED, ABANDONED AND CONFIS- "CABLE PROPERTY, FREEDMEN, ETC.

"TREASURY DEPARTMENT, June 27, 1865.

"The various rules and regulations heretofore prescribed "by the Secretary of the Treasury, in regard to the above- "named subjects, having been rendered nugatory in "whole or in part by the changed condition of affairs in "the Southern States and Executive orders and proclama- "mations, and the War Department having assumed "charge of freedmen, abandoned lands, &c., under the "provisions of the act of Congress approved March 3, "1865, the following instructions as to the duties of offi- "cers of the Treasury Department in the premises are "prescribed, and will be regarded as in full force and ef- "fect immediately on the receipt thereof by any officer "whose action is in anywise affected thereby:

"1. All restrictions on commercial intercourse in and "with States and parts of States heretofore declared in "insurrection, and on the purchase, transportation and "sale of the products thereof, are removed; *except* as to "the transportation thereto or therein of arms, ammuni- "tion, articles from which ammunition is made, gray "uniforms and gray cloth; and *except, also,* those relating "to property heretofore purchased by the agents or cap- "tured by or surrendered to the military forces of the "United States. Nor will any fees or taxes be charged or "collected except those imposed by the customs and inter- "nal revenue laws. And the supervision necessary to pre- "vent the shipment of the prohibited articles will be "exercised only by the regular and ordinary officers of

"the customs, acting under the revenue laws of the "United States.

"2. Subordinate officers discharging duties in regard "to commercial intercourse, under the regulations referred "to, will consider their official connection with this De- "partment as terminating with the 30th instant, without "further notice.

"2. Agents for the purchase of products of insurrection- "ary States on Government account will close their official "business east of the Mississippi, with the transactions of "the 13th instant; and west of it, with the transactions of "the 24th instant; returning to sellers all property or money "received or collected since those dates, respectively, and "using such dispatch in the premises that their connection "with the Department may, if possible, terminate with "the 30th instant.

"4. Officers of this Department charged with the duty "of receiving or collecting, or having in their possession "or under their control captured, abandoned or confis- "cable personal property, will dispose of the same, in ac- "cordance with regulations on the subject heretofore pre- "scribed, at the earliest time consistent with the public "interests, and will refrain from receiving such from mil- "itary or naval authorities after the 30th instant. This "will not be construed, however, as interfering with the "operations of the agents *now* engaged in receiving or col- "lecting the property recenlty captured by or surrendered "to the forces of the United States, whether or not cov- "ered by or included in the records, etc., delivered to the "United States military or Treasury authorities, by rebel "military officers or cotton agents. Those so acting will "continue to discharge the duties thus imposed until such "property is all received or satisfactorily accounted for, "and until the amount so secured is shipped or otherwise "disposed of under the regulations on the subject hereto- "fore prescribed. And they will use all the means at their "command, with the utmost vigor, to the end that all the "property so collected, captured or turned over shall be "secured to the United States with the least possible cost "and delay.

"*After* the 30th instant, the duty of receiving captured "and abandoned property not embraced in the above ex- "ception, will be discharged by the usual and regular "officers of the customs, at the several places where they "may be located, in accordance with regulations relating "to the subject; and officers heretofore performing that "duty will give them all the aid and information in their "power to enable them to carry out the same.

"5. Officers of this Department charged with the care "or supervision of, or having in their possession or under "their control, any abandoned or confiscable lands, houses "and tenements, will turn them over to a duly authorized "officer of the Bureau of Refugees, Freedmen, and "Abandoned Lands, so far as they may be required or "demanded by the same, together with all moneys, "books, records and papers arising from or relating to "the property so turned over, taking proper receipts or "vouchers therefor. This rule will also govern the action "of all agents of this Department connected in any way "with the care of freedmen, etc., so far as it may be ap- "plicable.

"And all persons asking for any information in regard "to the property so turned over, or for the release of the "same, or for the release of any proceeds or moneys "arising therefrom, will be referred to the Commissioner "of Refugees, Freedmen, and Abandoned Lands, at "Washington, to whom communications on the subject "should be addressed.

"6. Officers of this Department having in their posses- "sion or under their control any moneys whatever arising "from fees collected under the commercial intercourse "regulations (except those collected for the benefit of "freedmen, which will be disposed of under section 5), or "from the sales of captured, abandoned or confiscable "personal property, will forthwith deposit the same with "the nearest assistant treasurer, designated depositary, or "deposit bank, (keeping the amounts from the different "sources separate), to the credit of H. A. Risley, Esq., "supervising special agent, etc., taking therefor receipts "in quadruplicate—which receipts must show whence the "sums were received—one of which will be retained by

"the officer so depositing, one forthwith sent to the Secre-
"tary of the Treasury, one te the Commissioner of Cus-
"toms, and one to Mr. Risley, at Washington.

"7. All officers above referred to, except proper offi-
"cers of the customs, acting exclusively under the rev-
"enue laws, will, after they have closed their official
"business, as above directed, and sold at auction, to the
"highest bidder, the furniture and property remaining on
"hand, and accounted for the proceeds of the same, forth-
"with systematically arrange the books, records, papers,
"etc., of their late office, that they may easily be referred
"to and examined, pack them in secure and waterproof
"boxes, and forward the same, so marked as to indicate
"their contents, together with their respective resigna-
"tions, addressed to the Secretary of the Treasury, Wash-
"ington City.

"HUGH MCCULLOCH,
"Secretary of the Treasury.

It has never been explained how, consistently with the above cited proclamation and circular, the Secretary of the Treasury could lawfully give to Cabell the authorization which was given by his letter of November 17th, 1865, in respect to the cotton named by Cabell in his communication of November 16th. On the facts, as they stood at the trial of this action, upon the plaintiff's evidence, this cotton was Lamar's private property; it had never been captured at any time; it did not come within any of the predicaments in which the Treasury agents were authorized by the circular to continue to act after June 30th, 1865; it was the property of a man who had taken the amnesty oath six months before the seizure, and who, under both the proclamation and the circular, had a perfect right to ship it to a Northern market, or any part of the world, or to hold it where it was, unless it should have been captured by the military forces then occupying Florida; Cabell, and every other Treasury agent, was *functus officio* as to any authority to make a fresh seizure after the 30th of June, 1865, or to collect property from the military authorities which he was not then engaged in collecting; and his employment in November, 1865, to make a special seizure of Lamar's cotton, must be

taken to have been an employment not as a public officer of the government under the Abandoned and Captured Property Acts, but as a personal agent of the defendant. Under these circumstances, therefore, if the seizure was made upon any theory that a cause for "forfeiture" might thereafter be discovered and enforced, of which purpose there was no evidence at the trial, the authorization and the seizure constituted the very essence of a tort; for the one was given and the other was made at the risk of finding some ground aside from capture on which the property could be proceeded against after possession was obtained. A public officer who assumed such a risk, and thereafter, when the property had come within his control, never instituted any proceedings to enforce the supposed forfeiture, but caused the property to be sold and the proceeds to be paid into the Treasury under a totally different right of government possession, such as the Abandoned and Captured Property Acts gave, thereby necessarily subjected himself to an action of trespass at common law.

[If we were to indulge in conjectures, we might readily imagine that at the time of these transactions the Secretary of the Treasury was overwhelmed with public business; that he probably signed papers that were put before him by his subordinates without much, if any, personal investigation, and that now no explanation can be given of the theory on which he came to give Cabell the authorization that he did give by his letter of November 17th, 1865. But we do not know that this would alter the legal consequences of what was done, or vary the rights of the man who was injured. Nor would it satisfactorily account for the refusal to afford that man any redress, when the Secretary of the Treasury had it in his power to restore at least the proceeds of so much of the cotton as had been sold, and to release all that had not been sold. That he had this power he was advised by the "special counsel" of the Department; and all the reason for not exercising that power was suggested long afterward, namely: That the property was tainted with a cause of "forfeiture" for which it never was seized, which, if it ever existed, was purged by the President's pardon, and for the enforcement of which no proceeding was ever instituted.]

V.

The presiding Judge erred in ruling as he did, because the question whether the defendant executed the Abandoned and Captured Property Acts was not a mere question of law, but was a mixed question of law and fact. If the District Attorney did not choose to offer any evidence on this or any other issue in the case, it was still the duty of the presiding Judge to put the plaintiff's evidence to the jury, on a proper instruction as to what would constitute an execution of those acts, and would make a case for the exclusive jurisdiction of the Court of Claims. Instead of this the judge gave a peremptory direction to the jury to return a verdict for the defendant on the plaintiff's evidence, thereby assuming to decide matters of fact as well as matters of law.

We have thus far presented the case on the assumption that nothing is open in this Court on the present Writ of Errors, excepting the correctness of the ruling by which the Court below directed the jury to return a verdict for the defendant upon the ground that the plaintiff's declaration and evidence made a case for the exclusive jurisdiction of the Court of Claims, thereby taking from the jury this and every other issue made by the pleadings in the case. But inasmuch as the pleadings made other issues, and as this Court may possibly think it best to consider and act upon them so far as to guide the Court below on the new trial which we claim, we shall take up each of them and submit our views upon it. The first of these other issues relates to

THE STATUTES OF LIMITATIONS PLEADED.

On this issue no verdict was taken, although it involved questions of fact, because the defense that the action was barred by lapse of time turned upon the facts of the defendant's residence at the time when the cause of action

arose, and his first coming within the jurisdiction of the Court in which the action was brought. The action being for a personal tort, the defendant was liable to suit wherever he was after it accrued. Although it might have been brought in the District of Columbia, where the defendant resided when the cause of action accrued, the plaintiff was not bound to follow the defendant into that jurisdiction. He might sue the defendant in any State of the Union where he could make service of a summons; and under the pleadings the question in regard to either of the limitations pleaded was whether the plaintiff served the summons in New York within the time when those limitations were respectively running in that jurisdiction. If the plaintiff, by reason of the defendant's absence from that jurisdiction, could not serve him with process in that jurisdiction earlier than he did serve it, the action was not barred. The evidence, therefore, relative to the defendant's residence at the time the cause of action accrued, and to his first presence in the jurisdiction where the action was brought, was material to this issue, and required to be passed upon by the jury, under proper instructions of law, before the verdict and judgment could cover the issue made by the pleadings in this behalf.

One of the limitations pleaded was a limitation of six years. This we take it was a limitation under the law of New York, the law of the forum where the action was brought. The evidence showed that the defendant became Secretary of the Treasury in March, 1865, and held that office until March, 1869. Before he became Secretary of the Treasury, he had resided two years in the District of Columbia as Comptroller of the Currency. Before he held the latter office, his residence was in the State of Indiana. He dwelt in the District of Columbia until the autumn of 1870, when he went to England, where he remained till the autumn (September) of 1873; at which time he came to New York on a visit. In January, 1874, he returned to England. He did not dwell or reside in the City of New York between 1864 and 1874 (Record, pp. 150, 151). The summons in the present action was served upon him September 24, 1873, in the City of New York, being a summons in the Supreme Court for the City and County and

State of New York (Record, p. 2). He caused the action to be removed into the Circuit Court of the United States for the Southern District of New York, November 1-3, 1873 (Record, p. 4). The first seizure of Lamar's Florida cotton was made in September, 1865, and the last in November, 1865. If we take the earliest seizure or the latest, as the time when the cause of action accrued, a period of eight years elapsed before the action was brought. But if the defendant was not within the jurisdiction of the State Court of New York, or of the Circuit Court of the United States for the Southern District of New York, so that the plaintiff could not serve him in that jurisdiction until September, 1873, the six years' limitation did not begin to run in that jurisdiction until he first came within it. And if he was out of the United States from the autumn of 1870 until September, 1873, and the cause of action accrued in September or November, 1865, no six years' limitation had run anywhere excepting for five years; it was suspended while he was out of the country, and did not again attach until September, 1873. As he was served with process on the 24th of September, 1873, the action was not barred by a six years' limitation.

The other limitation pleaded is the Federal Statute of March 3, 1863. The fifth plea in this behalf avers that the defendant's acts, which are the supposed trespasses, were all done *as Secretary of the Treasury in the administration of, and in virtue and under color of*, the Abandoned and Captured Property Acts; and that under the Act of March 3, 1863, the alleged cause of action did not accrue within two years next before the action was commenced; and the inference is that after two years no action could be maintained any where against the defendant. The plaintiff's *replication* properly traversed this allegation of the plea, by averring that the defendant, before and at the time when the cause of action arose, was in parts beyond the jurisdiction of the Circuit Court of the United States for the Southern District of New York, and not within the limits of the State of New York, and that the defendant returned within that jurisdiction on the 24th of September, 1873, which was his first return after the cause of action arose,

to wit, at the Southern District aforesaid, and that the plaintiff served the summons in the action within two years after the defendant's first return within that jurisdiction subsequent to the accruing of the cause of action. The rejoinder of the defendant traversed and denied the replication to the 5th plea in respect to his absence from the jurisdiction and the time of service of the summons, and made an issue to the country on the facts alleged by the replication and traversed and denied by the rejoinder.

It is to be observed that the cause of action, to which the 5th plea undertook to apply the two years' limitation, was one which the defendant meets by the defense that the cotton had, before the action was brought, to wit, in the month of November, 1865, been taken, received and collected as captured and abandoned property by the defendant, as Secretary of the Treasury, through special agents, in pursuance of the Abandoned and Captured Property Acts; that it was lawfully appropriated and forwarded under those acts; and that all of defendant's acts respecting it were done by him as an officer or agent of of the United States, namely, as Secretary of the Treasury, in the administration of and in virtue and under color of those statutes. Under the 5th plea, therefore, the question arose, what is the true intent and operation of the Act of March 3, 1863, in reference to a supposed trespass committed by the defendant aside from the administration of the Abandoned and Captured Property Acts, and not in virtue and under color thereof, in determining the application of the two years' limitation prescribed by the statute which is pleaded in bar of the action? The Court below was thus called upon to determine and instruct the jury, *first*, what was an administration of the Acts of March 12, 1863, and the Acts amendatory of and supplementary, thereto, and what was acting in virtue and under color of those statutes; and *secondly*, what is the proper construction of the Act of March 3, 1863, in respect to the two years' limitation upon a cause of action that was a trespass, if the acts of the defendant did *not* constitute either an administration of the statutes pleaded, or an acting in virtue and under color thereof.

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The section of the Act of March 3, 1863, which is the one referred to in the 5th plea, reads as follows :

"An Act relating to *habeas corpas*, and regulating
" Judicial Proceedings in certain cases.
"U.. S. Statutes at Large 12, page 755.

"Section 7. And be it further enacted, that no suit
" or prosecution, civil or criminal, shall be maintained for
" any arrest or imprisonment made, or other trespasses or
" wrongs done or committed, or act omitted to be done,
" at any time during the present rebellion, by virtue or
" under color of any authority derived from or exercised
" by or under the President of the United States, or by
" or under any Act of Congress, unless the same shall
" have been commenced within two years next after such
" arrest, imprisonment, trespass, or wrong may have
" done or committed or act may have been omitted to be
" done; provided, that in no case shall the limitation
" herein provided commence to run until the passage of
" this act, so that no party shall, by virtue of this act, be
" debarred of his remedy by suit or prosecution until two
" years from and after the passage of this act.
"Approved, March 3, 1863."

We submit that it was not the intent of this statute to make a distinction between executing a law and acting in virtue and under color of it; and we do not understand that the 5th plea makes such a distinction. Official acts, done under a statutory authority, can only be acts done according to the authority given; and the plea asserts and relies upon an execution or administration of two laws which gave a certain authority to the Secretary of the Treasury. If the defendant did not act "in pursuance of" that authority—did not keep within the limits of his official power—did not "take, receive and collect" the plaintiff's cotton as the statutes pleaded prescribed, he committed a trespass, and it is vain to say that he took it in virtue and under color of those statutes, unless the 3d section of the Act of March 3, 1863, meant to make that distinction. To adopt such a construction would be to suppose that Congress meant to create, for officers of the

United States, an immunity from suit, after two years, for personal torts done to private individuals, by establishing as a defense to an action of trespass or trover not only an execution of a law, but an acting in virtue and under color of that law, the latter meaning something different from the former. We suppose that all statutes of limitations must receive a reasonable construction, and that when a public officer has acted outside of his lawful authority, and committed a trespass by so acting, this Statute of Limitations is not to be construed as giving him a specific and separate defense of having acted in virtue or under color of his lawful authority, and limiting the time of bringing an action to the very short period of two years, when he did not pursue his lawful authority, but went entirely aside from it. But whether this statute makes such a distinction or not, whether the defendant executed his lawful authority, or merely acted in virtue and under color of it, both of which we deny, and claim to have disproved, it is clear that the present action was commenced seasonably, if the defendant was absent from the jurisdiction where the action was brought until September 24, 1873, unless the statute is to be construed in what we suppose would be a very unreasonable way, and in a way which Congress did not intend.

We suppose that all Statutes of Limitations of personal actions, especially of actions of tort against public officers, are to be construed and applied by the principle that their operation is suspended when the defendant is not within the reach of process. It is not to be supposed that Congress intended to establish a limitation running simultaneously everywhere in the United States after a personal cause of action accrued, without any reference to the situation or residence of the plaintiff or the defendant, respectively. Such a construction would enable a defendant, a public officer, who had committed a trespass in Florida, to remain for two years in the most remote Northwest corner of the Union, and if the plaintiff did not find and sue him *there* within the two years, that the action would be barred everywhere. The Union is divided into States, Territories and the District of Columbia, for judicial purposes; and in each there are Courts of local juris-

diction; State and Federal Courts in the States, territorial Courts in the Territories established by Congress, and Courts for the District of Columbia, also created by Congress. All of these Courts have a jurisdiction *in personam*, which attaches to a defendant by reason of service of a local process. A right of action for a personal tort adheres to the plaintiff wherever he resides, and the defendant is liable to be sued on it wherever a good service can be made upon him either in a Federal or a State Court. If a plaintiff, resident in the State of New York, must bring his action against the defendant in the District of Columbia, or in any State or Territory where the defendant chooses to be, within two years from the time when the cause of action accrued, or be barred by the statute everywhere, the statute will receive a construction which, we submit, Congress could not have intended, and which is certainly not expressed in its terms. It must be presumed that Congress enacted this law with reference to the principle that all Statutes of Limitations of personal actions are subject to suspension while the defendant is absent from the jurisdiction where the plaintiff has a right to sue him if he can serve him with process, and especially when he is absent from the jurisdiction where the plaintiff has his residence. For it is not to be presumed that Congress meant to compel a plaintiff to travel a thousand miles, more or less, to find and serve the defendant within two years of the time when a personal cause of action accrued, or be barred everywhere if he did not. If, therefore, the defendant in the present action remained in the District of Columbia from November, 1865, until the autumn of 1869, or January, 1870, then went to England, and was not within the State of New York, or elsewhere in the United States, until September, 24, 1873, the statute did not begin to run while he was so absent from the jurisdiction in which the action was brought.

In reference, therefore, to the two years' limitation, we contend:

1st. That it has no application to a case in which a public officer did not act within the scope of his delegated powers, but acted wholly aside from them. Unless this

Court can now hold, contrary to its decision, in Lamar *vs.* Brown (92 United States Reports, 187), that previous military capture or seizure was not an essential element in the powers delegated to the Secretary of the Treasury under the Abandoned and Captured Property Acts, the seizure which was made was a naked trespass, and to such a cause of action Congress cannot have intended to interpose a limitation of two years simultaneously operative everywhere throughout the United States.

2d. That if the two years' limitation is applicable to this case, the action was brought seasonably.

THE ISSUES UNDER THE 2D, 3D AND 6TH PLEAS, THE REPLICATIONS THERETO AND THE REJOINDERS.

The defense interposed by the 2d plea, is that the 426 bales of cotton "had been taken, received and collected *as* abandoned *or* captured property into the hands of certain special agents, *duly appointed by the Secretary of the Treasury to receive and collect captured or abandoned property in said States* [States declared in insurrection], *in pursuance of the provisions* of the first section of the Act of Congress, approved March 12, 1863, entitled, &c., and the acts amendatory thereof and supplementary thereto; *that all the other provisions* of said Act of Congress were carried out in regard to said bales of cotton, as being captured or abandoned property, and all acts done by this defendant respecting said cotton, were done by him, through the agents aforesaid, as such officers of the United States as aforesaid, and in the administration of and in virtue and under color of the aforesaid Acts of Congress. And the same are the several supposed wrongs and grievances mentioned and alleged in the plaintiff's declaration. "Wherefore" (the Plea concludes), "by force of the statute in such case made and provided, to wit, section 3, of the said Act of Congress, approved March 12, 1863, and section 3 of the Act of Congress approved July 27, 1868, entitled "An Act regulating judicial proceedings in certain cases for the protection of officers and agents of the

Government, and for the better defense of the treasury against unlawful claims," the defendant says that the said plaintiff hath no legal cause of action herein, but is barred from such action, which, by force of the statutes aforesaid, is exclusively within the jurisdiction of the Court of Claims."

It is nowhere expressly alleged in this plea that the property had been captured, or that it was abandoned before it was taken by the agent. The allegation is, that it was taken, received and collected *as* abandoned *or* captured property *into* the hands of the special agent. If this is to be considered as implying an allegation of previous capture or abandonment, it was left to be proved at the trial that the property was in one or the other of these predicaments before it was taken by the alleged agent, both with regard to the supposed exclusive jurisdiction of the Court of Claims, and to the alleged non-existence of a personal right of action. So, too, in regard to the carrying out of all the other provisions of the Act of Congress pleaded, which must be those relating to the sale of the cotton and the payment of the proceeds into the treasury, it is simply averred in the plea that these things were done to the property *as being* captured or abandoned property, and not that it was in fact in either predicament.

A further allegation is that all of the defendant's acts were done as an officer of the United States, and in the administration of and in virtue and under color of the Abandoned and Captured Property Acts (Record, p. 6).

The statute on which this defense is supposed to be founded (section 3 of the Act of July 27, 1868, 15 Statutes at Large, p. 243), reads as follows:

" SEC. 3. That it is hereby declared to have been the " true intent and meaning of the act approved March " twelve, eighteen hundred and sixty-three, entitled " ' An Act to provide for the collection of abandoned " ' property, and for the prevention of frauds in insurrec- " ' tionary districts within the United States,' that the " remedy given in cases of seizure made under said act, " by preferring claim in the Court of Claims, should be " exclusive, precluding the owner of any property taken

" by the agents of the Treasury Department as abandoned
" or captured property in virtue or under color of said act,
" from suit at common law, or any other mode of redress
" whatever, before any Court or tribunal other than said
" Court of Claims;

" And in all cases in which suits of trespass, replevin,
" detinue, or any other form of action may have been
" brought and are now pending, or shall hereafter be
" brought against any person for or on account of private
" property taken by such person as an officer or agent of
" the United States, in virtue or under color of the act
" aforesaid, or the act approved July second, eighteen
" hundred and sixty-four, entitled 'An Act in addition to
" 'the several acts concerning commercial intercourse be-
" 'tween loyal and insurrectionary States, and to provide
" 'for the collection of captured and abandoned property,
" 'and the prevention of frauds in States declared in insur-
" 'rection,' the defendant may and shall plead or allege in
" bar thereof that such act was done or omitted to be done
" by him as an officer or agent of the United States in the
" administration of one of the acts of Congress aforesaid,
" or in virtue or under color thereof; and such plea or al-
" legation, *if the fact be sustained by the proof*, shall be,
" and shall be deemed and adjudged in law to be, a com-
" plete and conclusive bar to any such suit or action; * *

This statute makes two provisions: *First*, that the remedy given in cases of seizure made under the Act of March 12, 1863, shall be exclusively in the Court of Claims, and shall preclude the owner of any private property taken by the agents of the Treasury as abandoned or captured property in virtue or under color of said act, from suit at common law, or any other mode of redress, before any Court or tribunal other than the Court of Claims. This, of necessity, implies that the foundation facts which give exclusive jurisdiction to the Court of Claims must exist, namely, that the property was captured, and was received and collected by the Treasury agent from the military authorities, or that it was found abandoned by the owner. Acting in virtue of or under color of the statute pleaded, cannot mean acting under any colorable pretense of executing a law, but it must

mean acting pursuant to the law. *Secondly*, the exclusion of any personal right of action provided by this section of the Act of July 27, 1868, such as an action of trespass brought by the owner of private property taken by an officer or agent of the United States, is an exclusion depending on the fact that the officer or agent who is sued acted in the administration of the statutes which he pleads in his defense, or in virtue or under color thereof, and this must be *established as a fact by proof at the trial of the action in the Court in which it is brought.* It could not have been the intention of Congress that acting in virtue or under color of a law should include acting under a colorable pretense of executing a law, for that would operate as a license to do acts of pure trespass upon the rights of private property. The meaning is that if the officer who is sued in trespass *shall prove as a fact at the trial* that he carried out the provisions of a law which gave him a certain authority in certain defined cases, he shall not be liable in trespass. The plea must, therefore, be a plea which can be sustained at the trial by proof that the officer pursued his lawful authority in all those particulars which constitute his authority to meddle with private property. Accordingly, the replication to this second plea, and the rejoinder thereto, made an issue to the country, both upon the alleged exclusive jurisdiction of the Court of Claims, and the alleged exclusion of all personal right of action. This issue should have been put to the jury under proper instructions of law as to what it was necessary for the defendant to prove, before the exclusive jurisdiction of the Court of Claims could appear, and before the plaintiff could be excluded from his right of action against the defendant. Instead of this, the presiding judge took from the jury all cognizance of the fact which the defendant had to prove, and instructed them to find a verdict for the defendant on the ground, as matter of law, that the plaintiff's evidence made a case for the exclusive jurisdiction of the Court of Claims, when that evidence clearly established that the foundation facts for that jurisdiction, namely, capture of the property, or its abandonment by the owner, were entirely wanting.

These observations apply equally to the third plea,

which sets up that the plaintiff has no legal cause of action against the defendant, by reason of section 3, of the Act of July 27, 1868. The replication to this 3d plea and the rejoinder thereto made an issue to the country on the matter of fact whether the defendant executed or carried out his lawful authority, and this issue should have been put to the jury under proper instructions of law. It was not put to them at all.

Recurring now to the defendant's letter to Cabell, of November 17, 1865, it is manifest that the authority given to him to secure to the Government the cotton named by him was *not* an appointment under the Captured and Abandoned Property Acts. The letter was addressed to him as "Acting Aid to Assistant Special Agent Treasury Department, Ninth Special Agency," a remote capacity in which he had been acting, or professing to act, in regard to certain *captured* property which was not this cotton of Mr. Lamar's. In regard to *this cotton*, what he was instructed to do was to secure it to the Government, and to transport it to a proper place of shipment at the earliest practicable day. If it was already captured or taken into the possession of the military authorities, it was already secured to the Government, and all that Cabell could do with it under the Captured and Abandoned Property Acts and the Treasury Regulations was to collect it from the military authorities, give a receipt for it, and transport it to a place of shipment. If it had not been captured, and had not been abandoned by the owner, he could not lawfully touch it as a Treasury agent acting under the Captured and Abandoned Property Acts. In the letter of November 17, 1865, the defendant did not in any way instruct Cabell to take this cotton only from the military authorities, or call his attention to the statutes or the Treasury regulations. It is by no means a certain inference from the remote capacity in which Cabell had been acting in regard to the other property, that he knew anything about the statutes or the Treasury regulations, if he cared anything about them. If we go forward to his report of February 17, 1866, it becomes certain that he never executed or undertook to execute the law in relation to captured property; and

it is equally certain that he made himself all the siezure that ever was made, and that he did not find this cotton abandoned by the owner. It is manifest, therefore, that if the issues under the 2d and 3d pleas had been put to the jury, as they should have been, the defense would have utterly failed.

In regard to any other theory on which the seizure can be supposed to have been made, if we assume that when Cabell made to the defendant his communication of November 17, 1865, he represented that this cotton helonged to the Exporting and Importing Company of Georgia, and that the defendant so understood it when he gave Cabell the authorization to secure this cotton to the Government, there were only two ways in which the Secretary of the Treasury could deal with it. One way was to instsuct Cabell to execute the Captured and Abandoned Property Acts, according to the statutes and the Treasury regulations. The other way was to proceed against the property as forfeited to the United States, by reason of the unlawful purpose and destination with which it was held by the owner. This was never done, in any shape or form, but the property was dealt with *as if* it had been captured or found abandoned by the owner. If the theory on which Cabell seized it, or was authorized to seize it, was that it was subject to forfeiture to the United States, by any taint adhering to it, the defense under the Captured and Abandoned Prorerty Acts entirely fails.

The 6th Plea interposes as a defense, that the plaintiff did not cease to aid and abet the rebellion after July 25, 1862, and within sixty days after the warning of the President's Proclamation, but on the contrary, did aid abet and encourage the rebellion, whereby all his estate and property, including that mentioned in his declaration, if in fact it belonged to him, became the property of the United States, and liable to seizure by the United States and its officers accordingly, and was so seized and used by and in behalf of the United States. Wherefore, the plea concludes, the plaintiff ought not to be allowed to have and maintain his action.

This plea was fully traversed by a replication, which

tendered an issue to the country, and this issue was joined by the defendant. But it was not put to the jury at the trial, and it cannot be disposed of without the verdict of a jury. Whatever the plea means by the property of the plaintiff having become liable to seizure and use by the United States or its officers, and by its having been so seized and used by and in behalf of the United States, there was a question of fact to be settled by the jury under proper instructions of law.

Under the present writ of error, this issue is not open in this Court; and if it were, there is nothing in the evidence adduced at the trial which has the slightest tendency to show that the seizure was made or was intended to be made upon the theory of forfeiture to the United States, on account of the owner's participation in the rebellion. This was a suggestion of Mr. Eames, made more than ten years after the seizure and removal of the cotton from the possession of the owner.

Another of the issues made by the pleadings which we contend is not now open in this Court on the present writ of error, but must be determined on a new trial, relates to

WHAT TOOK PLACE IN THE COURT OF CLAIMS, ON A PETITION BY LAMAR TO BE PAID THE PROCEEDS OF HIS THOMASVILLE COTTON AND OF HIS FLORIDA COTTON ALSO.

In the defendant's additional plea (Record, p. 17), filed by leave of the Court below December 12, 1879, it was set forth, that Gazaway B. Lamar, the original plaintiff in the present action, before he instituted this action, filed his petition in the Court of Claims to be paid the proceeds of his cotton taken at Thomasville in Georgia, in June, 1865, and also to be paid the proceeds of his Florida cotton, which is the subject of the present action of trover; that the Court of Claims adjudicated in favor of his claim in respect to the Georgia cotton, and that Lamar subsequently received the proceeds of it from the treasury. But the finding and judgment of the Court of Claims, set forth *in haec verba* in the plea, shows no adjudication in respect to

the Florida cotton, but only an adjudication in respect to the cotton captured at Thomasville, Georgia, in January, 1865. Nevertheless, the plea avers that the 426 bales of cotton which form the subject of the present action and of the alleged trespass, are the same 426 bales included in Lamar's petition in the Court of Claims, wherein he set forth the seizure and taking by Cabell as a treasury agent, in September, October and November, 1875, and also set forth that the proceeds thereof had been paid into the Treasury. Wherefore, the plea concludes, the plaintiff ought not to be allowed to have and maintain his present action, or, admitted to say "*against the record*" of the Court of Claims; that at the time of the taking of the 426 bales, he was lawfully possessed of the same, or that being so possessed the defendant unlawfully took and converted them. To this plea, there was a replication that in the Court of Claims there was no adjudication in respect to the 426 bales of Florida cotton, and that no part of the proceeds of them had ever been paid to the plaintiff, and that the defendant took and converted them in his own wrong and without the justification set up in the plea (Record, p, 25). The defendant filed a demurrer to this replication, but it was overruled by the Court after argument and before trial, and the replication stood for answer by the defendant. The defendant then duly traversed the replication and joined issue thereon to the country (Record, pp. 27–29).

At the trial, and on the motion of the District Attorney for a direction to the jury to find a verdict for the defendant, it was argued by the District Attorney that the proceeding in the Court of Claims was a bar to the present action, because the petitioner elected a remedy inconsistent with the present cause of action. But this did not constitnte any part of the ground on which his motion was granted. The pleadings had made an issue in respect to the proceeding in the Court of Claims, which required to be passed upon by the jury under proper instructions of law. This issue was not put to the jury, but they were peremptorily directed to find a verdict for the defendant *on the ground that the case made by the plaintiff's declaration and his evidence constituted a case for the exclusive*

jurisdiction of the Court of Claims; whereas the issue presented by the amended plea, the replication and the rejoinder, was whether there had been a proceeding in the Court of Claims which had barred the present action, not on the ground of exclusive jurisdiction in the Court of Claims, but on the ground of an election of a remedy inconsistent with the present action of trover. As the Court below did not in any way pass upon this issue, no error can be here assigned in respect to the mode in which it was treated by the Court.

But inasmuch as this Court may now possibly listen to an argument on this alleged election of an inconsistent remedy, we submit the appropriate answer to it, which is that the petition in the Court of Claims and the adjudication thereon, *constituted no bar to the present action.*

To bar the present action, the remedy previously sought in another jurisdiction, must have been,

1st. In a case of which the Court first resorted to could take jurisdiction. If a party mistakes his remedy, and resorts to a special jurisdiction which can take cognizance only of a case which must have certain peculiar requirements or features which he fails to establish, because he cannot then prove all the facts essential to that jurisdiction, he does not thereby waive or lose his right to resort to another jurisdiction, in which he can establish a different cause of action.

2d. The remedy previously sought in another jurisdiction must have been one invoked against the same defendant. The remedy invoked in the Court of Claims was a remedy against the United States, to be paid the proceeds of property of which it was then supposed the United States had constituted themselves trustees for the petitioner by taking his properiy under the Abandoned and Captured Property Acts. They had not, in fact, constituted themselves such trustees in respect to this property, although the petitioner had taken the amnesty oath before the seizure of it, for the Government never took the property under the Abandoned and Captured Property Acts. The Government did not hold the proceeds of the property

subject to the action of the Court of Claims. They were in the Treasury by the wrongful act of the defendant. The defendant was not the same party as the United States, nor was he in privity with them, in respect to the seizure and removal of the original plaintiff's property. He is now defendant in an action of trespass, founded on a tort which became such by reason of his not acting within the scope of his delegated powers as a public officer; and although the executive department of the Government may very properly conduct his defense in Court, its doing so does not establish any privity between him and the United States in respect to the seizure and conversion of the property. A Secretary of the Treasury has no privity with the United States in respect to a claim made in the Court of Claims for restoration of the proceeds of abandoned or captured property. His official acts might give rise to the claim. But after the claim had arisen, he had no privity of interest with the United States. So, too, the United States have no privity of interest with a Secretary of the Treasury who has exceeded his authority and made himself liable for a personal tort.

3d. The judgment in the first suit must have concluded the issue made in the second suit. The matter to be tried in the Court of Claims, in respect to the petitioner's Florida cotton, could arise only out of a state of facts diametrically opposite to the state of facts out of which the personal tort arose.

The leading case in support of these points is

Packet Company *vs.* Sickles, 5 Wallace, 592.

Some effort may perhaps be made at the argument in this Court to found support of the amended plea respecting the effect of the petition and proceeding in the Court of Claims, upon an allegation in that plea to the following purport: That the petitioner in the Court of Claims attempted and failed to show that he was the owner of the 426 bales of cotton seized by Cabell; that Secretary of the Treasury Richardson, in answer to a call from the Court of Claims, transmitted to that Court *information*, taken

from the files of the Treasury Department, that Cabell shipped to New York, to S. Draper, United States agent, 272 bales of cotton, *reported* by him to have been collected in Florida, as the property of "The Importing and Exporting Company of Georgia, G. B. Lamar, President; that the net proceeds thereof ($21,594.14) were paid into the Treasury; and thereupon such proceedings were had in that Court, when the cause came on for trial, that the Court, on the 2d of June, 1873, filed the following findings of fact, *and no other*." The findings set out in the plea related exclusively to Lamar's cotton in Georgia; which was captured by General Sherman's forces in June, 1865, and the judgment of the Court covered nothing else. The inference intended to be drawn is, that the Court of Claims forebore to find the Florida cotton to have been the property of Lamar individually, because it was "informed" by the Secretary of the Treasury that Cabell had "reported" it to have been the property of the Importing and Exporting Company. To this there are several obvious answers:

1st. The Court of Claims found nothing whatever about this Florida cotton; did not negative Lamar's personal ownership in any way, or pass upon the ownership of any thing but his Georgia cotton.

2d. Cabell's "report" that the Florida cotton was the property of the Importing and Exporting Company, was his naked assertion, unsupported by his oath, or by any facts, and was not evidence on which the Court of Claims could have based any findings in respect to it.

3d. It is now perfectly evident from the loss of Lamar's books and papers, proved to have been taken from him in Savannah and sent to the War or Treasury Department, and inaccessible to him when his petition was pending in the Court of Claims (see his Deposition, Record p. 34), that he failed to prove in that Court his individual ownership of the Florida cotton seized by Cabell, because he had not then the means in his possession of proving it, such as were used on the trial of this present action by his exec-

utor long after his death. Furthermore, if he had been able to prove his ownership in the Court of Claims, the fact would have done him no good; for, at the same time that he proved his ownership, he would have been obliged to show, if he then knew the facts, that Cabell took his Florida cotton without collecting it from the hands of the military authorities, and thus he would have proved himself out of the jurisdiction of that Court. There can therefore be no legitimate inference that the Court of Claims ever took or exercised any jurisdiction over that part of his petition which related to his Florida cotton, although he did undoubtedly suppose at the time he filed and prosecuted his petition, that the Government itself would, if it could, show that this cotton had been captured, as was shown to have been the case with his Georgia cotton.

When Mr. G. B. Lamar, on the 24th of September, 1873, commenced the present action against Mr. McCulloch, nothing whatever had occurred in the Court of Claims which could be set up as a bar to the action, or to a recovery in it.

Issue Made by Defendant's Amended Rejoinder.

On the 12th of December, 1879, the defendant filed, by leave of the Court below, an amended rejoinder to the plaintiff's replication to the defendant's second plea (Record, p. 20). This amended rejoinder, set up in bar of the present action, that before instituting it, the original plaintiff, G. B. Lamar, brought an action of trover against A. G. Browne *et al.*, in the Circuit Court of the United States for the First Circuit, to recover the value of 1,800 bales of cotton alleged in his declaration to have been unlawfully taken and converted in Georgia by the defendants; that the defense in that action was rested upon the ground that the defendants therein had taken, received and collected the cotton as Treasury agents under the Abandoned and Captured Property Acts, *in the State of Georgia;* that this defense was traversed and denied by the then plaintiff, and that on the issue thus made judg-

ment was rendered for the defendant therein by the said Circuit Court. Whereupon the amended rejoinder in the present action praved judgment whether the plaintiff ought to be allowed to maintain the present action for the 426 bales of Florida cotton, which are the subject of the present action of trover.

The plaintiff filed a surrejoinder to this amended rejoinder, alleging that "the cotton sued for in the action in the said amended rejoinder mentioned, wherein Gazaway B. Lamar was plaintiff and A. G. Browne & *al.*, were defendants, was cotton seized and captured by the military forces of the United States in the State of Georgia, acting under the orders of Major-General Sherman, and was in the said action adjudicated to have been handed over by the military authorities of the United States to the said Browne, Browne and Beard, acting as civil officers of the Treasury of the United States for the receipt, collection and disposal of captured or abandoned property; whereas the 426 bales of cotton, charged in the plaintiff's declaration to have been seized and appropriated by the defendant at Tallahassee, in the State of Florida, are in no way involved in or affected by the judgment of the Court in the said action in the said amended rejoinder referred to, but the same were taken and appropriated by the defendant, acting through his said agent, Samuel G. Cabell, in his own way, and not under the acts of Congress relating to captured or abandoned property, and without the justification held by the Court to have been valid in the said action instituted by the said Gazaway B. Lamar against the said Browne, Browne and Beard. And this the plaintiff prays may be inquired of by the country." Record, p. 26).

The issue made to the country by the plaintiff's surrejoinder was duly joined by the defendant (Record, p. 27). [The action of Lamar *vs.* Browne *et al.*, is the same that was decided in this Court by affirming the judgment of the Circuit Court in the First Circuit, on the express ground that there had been a previous military capture of the Georgia cotton, to which alone the action in the first circuit related. See 92 United States Reports, 187.] The amended rejoinder, therefore, and the surrejoinder

thereto, presented the issue of law and fact, whether the seizure of the 426 bales of Florida cotton could be justified under the Abandoned and Captured Property Acts, as a taking by Cabell after a military capture, and as a collection from the military authorities, which the judgment of the Circuit Court and of this Court in the case of Lamar *vs.* Browne *et al.*, made indispensable to a good possession of property by a Treasury Agent. This issue, under the amended rejoinder and the surrejoinder, was not put to the jury on the trial of the present action. It stands for disposal at the new trial, which it is the object of the present writ of error to obtain. This Court, we submit, cannot pass upon it now, but can only determine whether the ruling of the Court below, which dispensed with previous military capture, was correct. If that ruling was not correct, there must be a new trial.

Gazaway B. Lamar was a man who suffered in person and property from some of those who administered the Federal Government during the closing years of the war, nothwithstanding he took the amnesty oath at a time when there was some merit in renouncing the Confederate Government, because it was doing just what President Lincoln meant to promote by issuing his proclamation offering pardon and restoration of property rights to those who should return to their allegiance to the United States. He has sworn that he ever afterward faithfully observed that oath, and there is not a particle of evidence in this Record that he did not. His sufferings led him, no doubt, to entertain bitter feelings towards the defendant, which are reflected in his deposition, and which he probably carried to his grave. But in his grave they are buried. His representatives brought this action to trial, and continue to prosecute it, in order to ascertain his and their rights in a large part of his estate, and not in the indulgence of any vindictive feeling against the defendant, or against the Government of the United States. If this Court can now say that the defendant acted within the scope of his official powers, and did not commit a trespass, we respectfully request that its opinion

may make clear the grounds on which the Court shall hold that the proceeds of this property are now rightfully in the Treasury, because there can be no doubt, in that event, that Congress will do what may be needful to reopen the jurisdiction of the Court of Claims to Mr. Lamar's executor, or give relief otherwise. On the other hand, if this Court shall hold that this personal action was rightly brought, there can be no doubt that Congress will protect the defendant, inasmuch as the proceeds of the property are now in the Treasury, and there can be no reason to suppose that the defendant personally profited in any way by the seizure, although the seizing agent did. The United States can abundantly afford to indemnify the defendant, for there are now in the Treasury about $5,000,000, proceeds of captured and abandoned property that have never been claimed by the owners, of which the proceeds of Mr. Lamar's Florida cotton have thus far, but erroneously, been assumed by the Treasury to be a part. They are the proceeds of property which was never captured by the United States military forces or abandoned by the owner. The Government has no right whatever to hold them.

All of which is respectfully submitted by

GEO. TICKNOR CURTIS,
EDWARD N. DICKERSON,
Of Counsel for the Plaintiff in Error.

115-163

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

LAMAR, EXECUTOR, &c.
v.
MCCULLOCH.
No. 1273.

MOTION TO ADVANCE.

This is a suit brought in the circuit court for Southern New York in 1873 to recover damages from the defendant for having, as Secretary of the Treasury, in December, 1865, authorized the seizure of a lot of cotton in Florida.

Recently the case has been decided in favor of the defendant, the jury having been instructed to find such verdict after the plaintiff had closed his case and without hearing evidence in rebuttal.

It will be obvious to the court that the defendant naturally desires to see an early end put to this cause of anxiety, which has been occasioned entirely by his holding office in a period marked by great difficulty in ascertaining and performing official duties.

Besides, inasmuch as if there be error in the record, the case will again go to a jury, it may be to the interests of the United States that it should be tried again as soon as may be, in order that there be no failure of evidence by casualties, &c.

S. F. PHILLIPS,
Solicitor-General.

115-163

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

G. DEROSSET LAMAR, EXECUTOR, plaintiff in error,
vs.
HUGH MCCULLOCH, DEFENDANT in error.
No. 828.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF OF DEFENDANT.

MEMO.—The claim is for 426 bales, at Tallahassee, Fla., and 578 bales, at Thomasville, Ga.]

The case in the Court of Claims, alluded to in the "additional plea for defendant," is put forth as having included the 426 bales (Tallahassee, Fla.). The decision gave judgment for a much greater quantity and amount than this, and it is not clear even from the "additional plea" that it was not given in favor of Lamar *as president of the Importing and Exporting Company of Georgia.*

The case brought in the United States circuit court against the special agents of the Treasury, and alluded to in the "amended rejoinder for defendant," is put forth as having included the 578 bales (Thomasville, Ga.). It is as to these 578 bales that the discontinuance is entered.

After this discontinuance the plaintiff demurs to the amended plea, "because the said plea shows on its face that no adjudication was had in the Court of Claims, or by law could have been had, in respect of the 426 bales of cotton sued for in the plaintiff's declaration as having been unlawfully and wrongfully taken and converted to his own use by the defendant" (page 25).

He also answers the amended plea by saying that no recovery was in fact had by the plaintiff; and although the 426 bales in each case are identical, yet they were never the property of the Importing and Exporting company, but were the individual property of Lamar (page 25).

The plaintiff's demurrer was overruled.

The defendant demurred to the plaintiff's replication, and his demurrer was also overruled, and he filed a *similit r.*

The plaintiff's sur-rejoinder to the "amended rejoinder" sets forth that the 426 bales were in nowise affected by the decision in the circuit court case, and to this traverse the defendant filed a *similiter.*

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BRIEF OF DEFENDANT.

On looking at the first portion of the record in this case, about thirty pages, and seeing the somewhat complicated pleadings in it, I was of opinion that a brief of those pleadings, in the shape of a "genealogical tree," would be of great service to the court in ascertaining the real issues involved, and accordingly I made out such a statement, and I append it to this brief. But after making this diagram, and going through the subsequent part of the record, I found an immense quantity of matter in

it that serves no good purpose whatever, and must really be an obstruction to the court in arriving at what is properly to be passed on. Although I thus found that the sketch of the pleadings was less important than I had at first supposed, yet I concluded to use it, thinking it might be of some service to the court in examining the case.

The bill of exceptions (running from page 31 to page 151, tr.) is liable to the severe criticisms passed upon similar documents by this court in Lincoln *vs.* Claflin, 7 Wall., 132, and Labor *vs.* Cooper, *Ib.*, 565. However, "winnowing away the chaff, we find the questions left for our examination neither numerous nor difficult of solution" (7 Wall., *supra*, 568). But the court will have to travel a good distance through the record to get at what is really presented, which can be found on page 151, tr., in the language following:

> And after hearing the defendant's counsel in support of his motion, and the counsel for the plaintiff in opposition thereto, and the counsel for the defendant in reply, the court directed the jury to find a verdict for the defendant, upon the ground that the Court of Claims had exclusive jurisdiction of the cause of action set forth in the plaintiff's declaration, and in the evidence, as given thereunder, by virtue of the statute of March 12, 1863, and the statutes passed amendatory thereof; and before the rendering and recording of the verdict Mr. Curtis, of counsel for the plaintiff, excepted to the ruling of the court in directing the jury to find a verdict for the defendant.

Really, this one single point is now just what is before this court to try, and nothing else. Throughout this en-

tire record there is but this solitary exception saved by the plaintiff. There are two exceptions saved by the defendant, to be found on pages 118 and 149, tr.; but of course they are not before this court. If the court should take the time to look through this huge bill of exceptions, which has in it almost everything conceivable except what the rules and practice of this court require, in some instances containing even the argument of counsel on questions before the court, it would be seen that the defendant has much more cause of exception for errors at the trial than the plaintiff has.

The whole case, then, rests here upon a plea to the jurisdiction of the court below, which is the second plea by the defendant. There was an additional plea, that the matter declared on had been passed upon by the Court of Claims, and was *res adjudicata;* but the court will observe, on page 24, tr., that a discontinuance is entered for one item of the claim; and the court below really did not pass upon the question of *res adjudicata*. Yet it is not too much to say that if that question had been fairly submitted to the jury, and the jury had passed upon it, with the testimony before them, it is quite certain they would have found that this matter had been adjudicated by the Court of Claims, and that the original plaintiff in this suit had actually received from the United States over $500,000 in satisfaction of his whole demand for the seizure of his cotton (8 vol. C. Cls., 564). But as before said, the case went off upon the single question of the jurisdiction of the Court of Claims, and that is simply this: That the defendant was an officer of the United States, and the property was taken by Government officers subordinate to him in

accordance with the act of Congress of March 12, 1863, as being captured or abandoned property, in States which had been designated as in insurrection against the United States, and that by force of this statute, and of the act of July 27, 1868, to regulate judicial proceedings in certain cases, &c., the jurisdiction is exclusively in the Court of Claims.

This brings the case directly within the decision of Lamar, executor, *vs.* Browne, 92 U. S., 187, if, indeed, that very case is not a part of this case; and no further argument need be made in support of the finding of the court below.

If any argument were needed upon the question of indemnity, under the act of Congress, for officers making such seizures it is entirely covered by adjudications of this court. Young *vs.* United States, 97 U. S., 39; Ford *vs.* Surget, *Ib.* 594; Dow *vs.* Johnson, 100 U. S., 158; 92 U. S., *supra*. Under these decisions the court might very well have instructed as the counsel for the defendant asked at the trial, which is as follows (page 151, tr.):

> That the taking by Cabell was lawful, because it was a capture; that the taking was lawful, because the property was abandoned; that the action of the defendant was such as does not subject him to an action for damages, because, under the general principles of law, the capture or taking was one for which there is a remedy only by application to the sovereign; that the defendant is not liable, because he was acting in the exercise of his discretion as a public officer; that whatever the defendant did was done by virtue of or under color of the captured and abandoned property acts, and he is protected by them, by the two years' limitation statute, by the act of 1868, and by the original intent of those acts.

That instruction covered the whole ground of this case, and was evidently based upon the adjudications of this court just referred to; but the court below did not give the instruction, but instructed as we have already seen, and therefore no question arises upon it here.

Some question is raised by plaintiff in relation to the positive instruction of the court in telling the jury to find a verdict for the defendant. But as there was no dispute about the facts upon which this direction was based, and there is no way of stating the case properly that can give rise to any controversy in this regard, it was within the province of the court to give an absolute direction to the jury (Bevans *vs.* U. S., 13 Wall., 56; Walbrun *vs.* Babbitt, 16 *Ib.*, 581; Hendrick *vs.* Lindsay, 93 U. S., 147; Phœnix Co. *vs.* Doster, 106 U. S., 32). It was simply a conclusion of law upon a given state of facts which were not and could not be disputed.

Even without this, the want of jurisdiction in the court below being shown upon the record, whatever that court did with it, however it was disposed of, or whether it was disposed of or not, this court will rule upon the question. The question once upon the record cannot be waived (M. C. & L. M. R. Co. *vs.* Swan, 111 U. S., 379; Thompson *vs.* Railroad Co's., 6 Wall, 134).

Respectfully submitted,

A. H. GARLAND,
Attorney-General.